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53702
Ch. 22

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 826

R. E. TAYLOR, APPELLANT,

vs.

THE STATE OF MISSISSIPPI

APPEAL FROM THE SUPREME COURT OF
THE STATE OF MISSISSIPPI

FILED MAR 15 1943 , 194 .

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Organization of the Court

[fol. 3]

Minutes and proceedings had and done at regular term of the Circuit Court, Madison County, State of Mississippi, began and held at the court house, in the City of Canton, in said county and state, beginning Monday morning at nine o'clock A.M., June 22, 1942.

Upon petition handed me by Hon. E. C. Fishel of Hattiesburg, Miss., it being the appointment made by the Governor Paul B. Johnson for the seventh Judicial District of Mississippi as follows to-wit:

There were present Honorable E. C. Fishel, Judge presiding; H. B. Gillespie, District Attorney; Nelson Cauthen, County Attorney; R. S. Streit, Court Stenographer; C. H. James, Sheriff and R. C. Randel, Circuit Clerk.

State of Mississippi

To All Whom these Presents shall Come, Greetings:

Know, Ye, That by virtue of the authority in me vested by the Constitution and Laws of the State of Mississippi, as Governor, I do hereby appoint, Hon. E. C. Fishel, Hattiesburg, Special Judge, relieving Judge J. F. Barbour for the Circuit Court of Madison County, Mississippi, which convenes Monday, June 22, 1942, County State of Mississippi and I do authorize, empower, and enjoin him, the said Hon. E. C. Fishel to execute and fulfill the duties of said office according to law, and to have and to hold said office from the date hereof, with all the powers, privileges and emoluments thereto appertaining until the said appointment is cancelled or revoked by competent authority, or until his successor in office shall have been duly appointed, qualified and installed in said office, accordance with the laws of the State.

In testimony thereof, I, Paul B. Johnson, Governor of the State aforesaid, have caused these letters to be made

patent, and the Great Seal of the State to be thereunto affixed.

Given under my hand, at the city of Jackson, the nineteenth day of June, in the year of our Lord One Thousand Nine Hundred and Forty Two.

PAUL B. JOHNSON, GOVERNOR

By the Governor

Walker Wood, Secretary of State

I, E. C. Fishel, do solemnly swear that I will faithfully support the Constitution of the United States and the Constitution of the State of Mississippi, and obey the laws thereof; that I am not disqualified from holding the office of Judge Pro-tem of the seventh Circuit Court District of Mississippi; that I will faithfully discharge the duties of the office upon which I am about to enter, (Judge, Pro-tem of the seventh Circuit District of Mississippi). So Help Me God. E. C. Fishel. Sworn to and subscribed before me this the 22, June A. D. 1942. R. C. Randel, Circuit Clerk of Madison Co., Mississippi.

Venire Facias

The State of Mississippi. To the Sheriff of Madison County: You are hereby commanded to summon, S. B. Lacy, C. C. Gartee, Jr., R. Thomas, L. O. Favor, G. Lehman, R. H. Holmes, Jr., E. C. Wall, C. Chance, M. E. Ragsdale, Homer Casteel, Jr., T. C. Riddick, J. L. Montgomery, B. L. Kearney, Thos. Hardy, J. M. Divine, W. L. Bardin, J. E. Hardy, G. D. Hedgepeth, P. L. Scott, S. J. Crisler, Luther Martin, S. K. Echols, Joe Cook, Stanley McDaniels, Leon Lynch, H. C. Waldrop, F. H. Battley, C. C. Lutz, Tony Klaas, A. W. Noland, J. S. Harris, Earl Holly, J. C. Brown, J. E. Richardson, Will Ratliff, Douglas Weeks, M. S. Cox, Jr., J. A. Minninger, C. L. Hogue, J. B. Cobb, W. J. Haffey, I. B. Whelan, Coleman Norman, M. N. Pitchford, Walter F. Ray,

E. W. Hill, D. S. Waldron, R. K. Shannon, W. K. Pace, C. H. Smith, W. C. Holleman, W. W. Terry, D. C. Cauthen, D. W. Murphey, J. A. Dickenson, E. B. Parker, W. E. Mansell, W. W. Billingslea, W. M. Greenwaldt, H. B. Dendy, W. S. Milton, Earl A. Simpson of your county, they having been legally drawn as Jurors, to be and appear before the Circuit Court of Madison County, at the next term of said Court, beginning on the 4 Monday in June A. D. 1942, to serve as Petit Jurors, for the week in said term beginning on Monday, the 22, day of June A. D. 1942, at nine o'clock A.M.

Herein Fail Not, and have you this process there on the first day of said Term with your endorsement thereon, showing how you have executed the same. Witness my hand as Clerk, with the seal of said Court thereto affixed, this the 17 day of June A. D. 1942.

By J. F. Barbour, Judge

Sheriff's Return

In pursuance of the mandate of the within Writ, I have executed the same by summoning as directed in the said Writ, the following Jurors to-wit:

S. B. Lacy, G. Lehman, M. E. Ragsdale, J. L. Montgomery, J. M. Divine, C. C. Gartee, Jr., R. Thomas, L. O. Favor, R. H. Holmes, Jr., E. C. Wall, J. C. Chance, Homer Casteel, Jr., T. C. Riddick, Thomas Hardy, W. L. Bardin, G. D. Hedgepeth, P. L. Scott, S. J. Crisler, Luther Martin, S. K. Echols, Stanley McDaniels, F. H. Battley, C. C. Lutz, Tony Klaas, A. W. Noland, J. S. Harris, Earl Holly, J. C. Brown, J. E. Richardson, Will Ratliff, Douglas Weeks, M. S. Cox, Jr., J. A. Minninger, C. L. Hogue, J. B. Cobb, W. J. Haffey, I. B. Whelan, Coleman Norman, M. N. Pitchford, Walter F. Ray, E. W. Hill, D. S. Waldron, R. K. Shannon, W. K. Pace, C. H. Smith, W. C. Hollman, W. W. Terry, D. C. Cauthen, D. W. Murphey, J. F. Dickerson, E. B. Parker,

W. E. Mansell, W. W. Billingslea, W. M. Greenwaldt, H. B. Dendy, W. S. Milton, E. A. Simpson.

Dated this 22 day of June A. D. 1942. C. H. James, Sheriff

Out of the Venire Facias the following persons are not found in county and excused to-wit: L. O. Favor, Homer Casteel, Jr., P. L. Hearney, J. E. Handy, Joe Cook, Stanley McDaniels, J. R. Lynch, H. C. Waldrop, Earl Holly, J. A. Dickerson, J. M. Divine, R. Thomas, R. H. Holmes, Jr., J. C. Chance, T. C. Riddick, P. L. Scott, S. J. Crisler, J. E. Richardson, W. W. Terry.

From the Veniremen drawn, summoned and appearing, the Judge, in open court drew from separate receptacles, in the manner provided by the statute the following persons to serve as Grand Jurors for the present term of court who came forward and were empaneled to-wit: Gerald Lehman, Luther Martin, C. H. Smith, C. C. Lutz, W. E. Mansell, M. N. Pitchford, Will Ratliff, I. B. Whelan, J. C. Brown, D. C. Cauthern, J. L. Montgomery, W. L. Bardin, D. S. Waldron, A. W. Noland, W. W. Billingslea, D. W. Murphey, S. K. Echols, E. W. Hill.

Thereupon the court appointed Will Ratliff, Foreman, of said Jury, who was then and there sworn in manner and form as required by statute, when the Grand Jurors on their respective parts took the same oath their foreman had taken on his part on their presence and hearing, then the Court duly charged said Grand Jurors concerning its duties as the law requires, after said charge the court appointed and duly swore W. P. Horn, bailiff of said Grand Jury, who then retired in charge of them and said bailiff to consider such matters that might come before them and of their presentment.

Out of the Venire Facias the following persons were drawn, sworn and empaneled to serve as Jurors number one for the week ending June 27, 1942 to-wit: S. B. Lacy, F. H. Battley, M. E. Ragsdale, G. D. Hedgepeth, Thomas Hardy,

Tony Klaas, W. J. Haffey, E. A. Simpson, Coleman Norman, C. L. Hogue, M. S. Cox, Jr., W. F. Ray.

Out of the Venire Facias the following persons were drawn, sworn and empaneled to serve as Jurors number two for the week ending June 27, 1942 to-wit: H. B. Dendy, W. C. Holleman, E. B. Parker, W. M. Greenwaldt, H. J. Cobb, J. E. Dunning, R. D. Bunyard, W. M. Lowery, J. N. Brown, W. R. Hart, E. A. Donohoe, D. H. Summerlin.

Indictment

[fol. 7]

MADISON COUNTY CIRCUIT COURT

June Term, A. D. 1942

STATE OF MISSISSIPPI, MADISON COUNTY

THE GRAND JURORS of the state of Mississippi, taken from the body of good and lawful men of Madison County, elected, empaneled, sworn and charged in inquire in and for said County at the Term aforesaid of the County at the Term aforesaid of the Court aforesaid, in the name and by the authority of the State of Mississippi, upon their oath present that R. E. TAYLOR AND MRS. R. E. TAYLOR late of the County aforesaid, on the 29th day of June A. D. 1942, at the County aforesaid did then and there wilfully, intentionally, unlawfully, and feloniously teach and disseminate teachings orally in that they said to Mrs. T. K. Joyner, Mrs. W. B. Denson, Mrs. Huston Bryant, and other persons whose names are at this time unknown to the Grand Jury, *"It is wrong for the President to send the army across for they are just being shot down for nothing. Hitler will rule, he will not come over here to do it. He won't have to. If we would quit kneeling and worshipping our flag peace would come to us, and study and learn this literature and worship in the right way peace would come to earth, but as long as we go around worshipping our flag*

and government, we will never have peace, for we just worship our flag and government for our religion", and in that they said to the same parties, "It is wrong for the President to put our boys in uniform and send them across. The sooner we quit bowing down to the flag that much sooner we will have peace." and that they said to Mrs. T. K. Joyner and Mrs. W. B. Denson that their boys might have thought they were doing right, but that it is wrong to fight our enemies; and other words and teachings all said teachings and words were designed and calculated to encourage disloyalty to the government of the United States of America and the State of Mississippi and reasonably tending to create an attitude of stubborn refusal to salute, honor and respect the flag and government of the United States of America and the State of Mississippi. And did then and there wilfully, intentionally unlawfully, and feloniously distribute literature and printed matter in that they did hand out and distribute to Mrs. T. K. Joyner, Mrs. Huston Bryant, Mrs. W. B. Denson, and other persons whose names are unknown to the Grand Jury at this time, books and pamphlets entitled GOD AND THE STATE which contain the statement, "Non-Christians may salute the flag without reference to the foregoing rules. Those who are real conscientious Christians are in a class entirely different from others of the world. Jehovah's witnesses are Christians and in a covenant to be entirely obedient to God's law. They must teach their children and admonish them to obey God's law, as he commanded. They are conscientious and they sincerely believe that for them to indulge in the formalism or ceremony of saluting any flag is a violation of God's specific commandment—", and which contains other paragraphs and statements of disloyalty to the United States of America; and books and pamphlets entitled REFUGEES which contain the statements, "All nations of the earth today are under the influence and control of the demons . . . All the nations suffer the same

fate or come to the same end, because all nations of earth are on the wrong side, that is on the losing side. All of such nations are against the Theocratic Government, that is the government or kingdom of the Almighty God . . . All are under the control of the invisible host of demons." and which contains other paragraphs and statements of disloyalty to the United States of America; and books and pamphlets entitled LOYALTY which contain the statement, "For the Christians to salute a flag is in direct violation of God's specific commandment", and which contain other paragraphs and statements of disloyalty to the United States of America; and books and pamphlets entitled END OF THE AXIS POWERS, COMFORT ALL THAT MOURN which contain the statement, "Almighty God commands that they must remain entirely neutral in the controversy. Because his covenant people are servants and representatives of THE THEOCRACY they must hold themselves entirely aloof from warring factions of this world.", and which contain other paragraphs and statements of disloyalty to the United States of America; all of said literature, printed matter, books and pamphlets were published by Watchtower Bible and Tract Society, Inc., International Bible Students Association, and were designed and calculated to encourage disloyalty to the government of the United States of America and the State of Mississippi and reasonably tending to create an attitude of stubborn refusal to salute, honor, and respect the flag and government of the United States of America, and the State of Mississippi contrary to the form of Statute in such case made and provided, and against the peace and dignity of the State of Mississippi.

H. B. Gillespie
DISTRICT ATTORNEY

No. 8672

MADISON COUNTY CIRCUIT COURT

JUNE TERM, 1942.

THE STATE

VS.

R. E. TAYLOR AND

MRS. R. E. TAYLOR [This name stricken on original]

INDICTMENT—NO PROSECUTOR

Witnesses

Mrs. W. B. Denson

Mrs. T. K. Joyner

Mrs. Houston Bryant

Vallie O'Neal

A True Bill

Will Ratliff

Foreman of Grand Jury.

Filed this 29 day of

June 1942.

R. C. Randel, Clerk.

By Deputy.

Capias

[fol. 10]

3645. CAPIAS. Under Code 1892.

THE STATE OF MISSISSIPPI,

TO THE SHERIFF OF MADISON COUNTY—Greetings:

We command you to take the body of **R. E. TAYLOR** IF TO BE FOUND IN YOUR COUNTY, and him safely keep, so that you have his body before the Judge of our Circuit Court, to be holden on the 29 day of June A.D., 1942, at the Court House thereof, in the County of Madison then and there to answer the State of Mississippi upon a charge exhibited against him by the Grand Jury of said

County, for *teaching doctrine pretending to create disrespect to the flag of the United States of America.*

Herein fail not, and have you then and there this Writ with your endorsement thereof, showing how you have executed the same.

Witness my hand as Clerk, with the seal of said Court hereto affixed this the 29 day of June A. D. 1942.

R. C. Randel, Clerk.

By, D. C.

SHERIFF'S RETURN

I have this day executed the within Writ personally by arresting the within named R. E. TAYLOR.

This the 29 day of June A. D., 1942.

C. H. JAMES, Sheriff

By, D. S.

No. 8672

CIRCUIT COURT

CAPIAS

THE STATE OF MISSISSIPPI

STATE

VS.

R. E. TAYLOR

Issued the 29 day of

JUNE A. D. 1942

R. C. RANDEL Clerk.

By, Deputy.

Filed the 29 day of

June A. D., 1942.

R. C. RANDEL, Clerk.

By, Deputy.

Motion to Quash Indictment

[fol. 12]

IN THE CIRCUIT COURT OF
MADISON COUNTY SEVENTH JUDICIAL DISTRICT
No. 8672

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)


Now comes the above defendant in the above entitled and numbered cause and file this *their* MOTION TO QUASH THE INDICTMENT returned and filed herein against him and as grounds therefor say:

ONE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is void on its face and unconstitutional because Section 1 thereof deprives the citizens and residents of Mississippi, and particularly these defendants, of their rights of freedom to worship Almighty God according to the dictates of their conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi, the First Amendment and Section 1 of the Fourteenth Amendment to the United States Constitution.

TWO

The Statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional as construed and applied to the activity of these defendants because Section 1 thereof deprives these defendants of their inherent rights of freedom to



worship Almighty God according to the dictates of his conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi and the First Amendment and Section 1 of the Fourteenth Amendment to the United States Constitution.

THREE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 1 thereof is unreasonable and in excess of the police powers of the State of Mississippi, thereby permitting the denial of liberty without due process of law, contrary to section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

FOUR

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 1 thereof is vague, too general, indefinite and permits speculation on the part of the jury and court trying the cause, thus constituting a dragnet, both on its face and as construed and applied, all contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

FIVE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 2 thereof is unreasonable and in excess of the police power of the state, and is vague, indefinite and a dragnet, in violation of Section 1 of the Fourteenth Amendment to the United States Constitution.

SIX

The Statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because the entire statute denies equal protection of the laws and discriminates between classes contrary to Section 1 of the Fourteenth Amendment to the United States Constitution.

SEVEN

The indictment fails to allege any facts or circumstances showing the commission of any public offense or the violation of any law of the State of Mississippi.

WHEREFORE defendant prays that the Court upon consideration hereof, sustain this MOTION TO QUASH the indictment and dismiss the indictment and order the defendant discharged with his costs, and defendants pray for such other and further relief as he may show himself justly entitled to.

G. C. CLARK
Attorney for Defendant

8672
Filed 6-30-42
R. C. Randel, Clerk.

Order Overruling Motion to Quash

[fol. 15]

IN THE CIRCUIT COURT OF
MADISON COUNTY
SEVENTH JUDICIAL DISTRICT
No. 8672

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)

The motion to quash the indictment, duly and timely filed by defendant herein, came on for consideration and the Court, after having heard argument of counsel thereon, is of the opinion that the same should be overruled. Accordingly it is hereby

ORDERED, ADJUDGED that said motion to quash the indictment is overruled, to which action of the Court the defendants are allowed an exception.

Book 12 P. 223

Demurrer to Indictment

[fol. 16]

IN THE CIRCUIT COURT OF
MADISON COUNTY, MISSISSIPPI
JUDICIAL DISTRICT
No. 8672

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)

Now comes the above named defendant, in the above entitled and numbered cause and files this his demurrer to the indictment returned and filed herein against him and as grounds therefor says:

ONE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is void on its face and unconstitutional because Section 1 thereof deprives the citizens and residents of Mississippi, and particularly these defendants, of their rights of freedom to worship Almighty God according to the dictates of their conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi, the First Amendment to the United States Constitution, and Section 1 of the Fourteenth Amendment to the United States Constitution.

TWO

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional as construed and applied to the activity of the defendant because Section 1 thereof deprives the defendant of his inherent rights of freedom to worship Almighty God according to the dictates of his conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi and the First Amendment and Section 1 of the Fourteenth Amendment to the United States Constitution.

THREE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 1 thereof is unreasonable and in excess of the police powers of the State of Mississippi, thereby permitting the denial of liberty without due process of law, contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

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FOUR

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 1 thereof is vague, too general, indefinite and permits speculation on the part of the jury and court trying the cause, thus constituting a dragnet, both on its face and as construed and applied, all contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

FIVE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 2 thereof is unreasonable and in excess of the police power of the state, and is vague, indefinite and a dragnet, in violation of Section 1 of the Fourteenth Amendment to the United States Constitution.

SIX

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because the entire statute denies equal protection of the laws and discriminates between classes contrary to Section 1 of the Fourteenth Amendment to the United States Constitution.

SEVEN

The indictment fails to allege any facts or circumstances showing the commission of any public offense or the violation of any law of the State of Mississippi.

WHEREFORE defendant prays that the Court upon consideration hereof, sustain this DEMURRER to the indictment and dismiss the indictment and order the defendant discharged with his costs, and defendant prays for such other and further relief as he may show himself justly entitled to.

Attorney for Defendant

State of Mississippi,
Madison County.

This is to certify that G. C. Clark, attorney of record herein, states this Demurrer is not filed for delay only, but that he believes affiant has a just and meritorious cause for this demurrer, and believes that same should be sustained..

Sworn to and subscribed before me this the 25 of June, 1942.

Clerk

8672

Filed 6-30-42

R. C. Randel, Clerk.

Order Overruling Demurrer

[fol. 19]

IN THE CIRCUIT COURT OF
MADISON COUNTY
SEVENTH JUDICIAL DISTRICT
No. 8672

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)

The demurrer to the indictment, duly and timely filed by defendant herein, came on for consideration and the Court, after having heard argument of counsel thereon, is of the opinion that the same should be overruled. Accordingly it is hereby

ORDERED, ADJUDGED that said demurrer to the indictment is overruled, to which action of the Court the defendants are allowed an exception.

Book 12- P. 225

Arraignment

[fol. 20]

No. 8672

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)

Now comes the state by her district attorney, H. B. Gillespie who prosecutes on behalf of the state and this defendant R. E. Taylor in his proper person and by his attorney who was duly and legally arraigned charging him with being disloyal to the Flag of the U. S. A. and entered a plea of not guilty.

Given Instructions

[fol. 21]

No. 8672

IN THE CIRCUIT COURT

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)**DEFENDANT'S REQUESTED INSTRUCTION
NUMBER THREE**

You are instructed that in this country every citizen has the absolute right to freely distribute literature and to speak freely upon any subject and thereby express himself and give any opinion concerning any matter without being held answerable therefor to the State of Mississippi, so long as he does not advocate the overthrow of the government, the Constitution and laws thereof, by himself or others, by force and violence or teach, preach or disseminate

doctrines tending to create disrespect or disloyalty to Government and if you so find, or if you have a reasonable doubt thereof, you will acquit defendant.

Given

The above instruction as amended was given by court and declined by defendant. The part in [*italics in print*] being the amendment.

E. C. Fishel
Special Judge

Refused & Filed
6/30/42
R. C. Randel, Clerk.

No. 8672

IN THE CIRCUIT COURT

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)

DEFENDANT'S REQUESTED INSTRUCTION
NUMBER EIGHT

You are instructed that under Section 18 of Article 3 of the Constitution of the State of Mississippi each and every inhabitant of the State is granted free enjoyment of all 'religious sentiments' and the different modes of worship shall be held sacred and the right thereby secured to every one to worship God according to the dictates of his conscience shall not be interfered with or denied by law unless the exercise thereof is injurious to public morals and dangerous to the peace and safety of the State, from which exercise of the right said danger must be found to be clear, immediate and present and not speculative in any indefinite time in the future. If you believe or find from the evidence, or have a reasonable doubt, that the defendant in the performance of the acts charged in the indictment was exercising his right to worship Almighty God according to the dictates of his conscience in distribution of said literature,

and you further find that the exercise of such right does not endanger immediately, clearly and presently the peace and safety of the State as well as the safety of the United States then you will acquit the defendant and by your verdict say: "We the jury find the defendant not guilty".

Filed 6-30-42

R. C. Randel, Clerk.

Timely presented and refused; exception taken.

Judge

Circuit Court

No. 8672

IN THE CIRCUIT COURT

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)

DEFENDANT'S REQUESTED INSTRUCTION NUMBER FOURTEEN

The term 'reasonable doubt' is a doubt which makes you hesitate as to the correctness of the conclusion which you reach. If under your oaths and upon your conscience and after you have fully investigated the credible evidence and compared it in all of its parts you can say, 'I doubt if he is guilty', then it is a reasonable doubt. It is a doubt which settles in your judgment and finds a resting place there, and which produces in your mind a grave uncertainty as to the verdict to be given.

Given

6/30/42

R. C. Randel, Clerk.

No. 8672
IN THE CIRCUIT COURT
THE STATE OF MISSISSIPPI
V.

RALPH E. TAYLOR, *Defendant* (s)
DEFENDANT'S REQUESTED INSTRUCTION
NUMBER SIXTEEN

You are instructed that Jehovah's witnesses have a right to believe, if they so desire, that to salute the flag is worshipping an image, and if they decline to salute the flag on this ground, the same would not be in violation of any law as charged under the indictment. To force one to salute the flag contrary to conscientious scruples as result of his faith and belief and contrary to his form of worship, would be in violation of the First and Fourteenth Amendments to the Constitution of the United States; and you cannot consider defendant's refusal to so salute in arriving at your verdict.

Given

Filed 6-30-42
R. C. Randel, Clerk.

No. 8672
INSTRUCTION NO. 20

The court instructs the jury that the state must prove that the defendant did disseminate the teachings in question, with the willful intent to cause disloyalty and disrespect to the government of the United States and of the State of Mississippi; and a stubborn refusal to salute the flag of the United States and unless you believe that, that was true beyond every reasonable doubt, then the form of your verdict should be, "We the jury find the defendant 'Not Guilty.'"

Given

Filed 6-30-42
R. C. Randel, Clerk.

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)

The Court instructs the jury for the State that if you believe from the evidence beyond a reasonable doubt that the defendant intentionally, unlawfully and feloniously taught or disseminated any teachings orally designed and calculated to encourage disloyalty to the Government of the United States, or the State of Mississippi as charged in the indictment or that he distributed any sort of literature or printed matter designed and calculated to encourage disloyalty to the Government of the United States or the State of Mississippi, or which reasonably tended to create an attitude of stubborn refusal to salute, honor or respect the flag or Government of the United States or the State of Mississippi, it will be your sworn duty to find the defendant guilty as charged.

Given

Filed 6-30-42

R. C. Randel, Clerk.

Refused Instructions

[fol. 27]

No. 8672

IN THE CIRCUIT COURT

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)

DEFENDANT'S REQUESTED INSTRUCTION NUMBER ONE

You are instructed that there is no statute or law of the State of Mississippi which requires an adult person not in

attendance at the public schools to perform the salute to the American flag or any flag, and in arriving at your verdict you cannot consider the fact that the defendant refused to salute or now refuses to salute the American flag.

Refused

Judge Circuit Court

Refused & Filed

6/30/42

R. C. Randel, Clerk.

No. 8672

IN THE CIRCUIT COURT

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant (s)*

DEFENDANT'S REQUESTED INSTRUCTION
NUMBER TWO

You are instructed that words spoken or printed must be more than a theoretical discussion, and before such can be made the basis of a conviction, you must find from the evidence beyond a reasonable doubt that such words are of such a nature as to create a clear, immediate and present danger that they will bring about the overthrow by force and violence of the Constitution, laws and government of the State of Mississippi and the United States, which you must find from the evidence beyond a reasonable doubt to be a clear, immediate and present danger. If you fail so to find or have a reasonable doubt thereof, defendant is entitled to an acquittal.

Refused

Timely presented and refused; exception taken.

Judge Circuit Court

Refused & Filed

6/30/42

R. C. Randel, Clerk.

No. 8672
IN THE CIRCUIT COURT
THE STATE OF MISSISSIPPI
V.

RALPH E. TAYLOR, *Defendant (s)*

DEFENDANT'S REQUESTED INSTRUCTION
NUMBER FOUR

You are instructed that the defendant has a legal right to print, sell, publish, circulate and otherwise distribute literature which attacks any religious principle, dogma, or doctrine, or any political belief, dogma, or doctrine, and to persuade others to their point of view, the defendants may resort to exaggeration, to vilification of men who have been or are prominent or low in church and state, and even may resort to false statements for this purpose, because the people through the Constitution have ordained in the light of history, that in spite of excesses and abuses this liberty is essential to enlightened opinion and democracy, and if there is any evidence of such you will not consider it in arriving at your verdict.

Refused

Timely presented and refused; exception taken.

Judge Circuit Court

Refused & Filed

6/30/42

R. C. Randel, Clerk.

No. 8672
IN THE CIRCUIT COURT
THE STATE OF MISSISSIPPI
V.

RALPH E. TAYLOR, *Defendant (s)*

DEFENDANT'S REQUESTED INSTRUCTION
NUMBER FIVE

The defendant offered in evidence and contends that he does not advocate or teach orally or in writing not to salute

the flag or not bear arms in defense of the country, but that he merely declares the commands of Almighty God with reference thereto. If you find and believe that the defendant does not advocate and teach, but merely declares the commands of Almighty God, or if you have a reasonable doubt thereof, you will acquit the defendant.

Refused

Timely presented and refused; exception taken.

Judge Circuit Court

Refused & Filed

6/30/42

R. C. Randel, Clerk.

No. 8672

IN THE CIRCUIT COURT

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)

DEFENDANT'S REQUESTED INSTRUCTION
NUMBER SIX

You are instructed that according to Section 6 of Article 3 of the Constitution of the State of Mississippi the people of this State have the inherent right to alter and abolish their form of government whenever they deem it necessary to their safety and happiness, and every person has the right to advocate a change in the form of government provided that he does not advocate the overthrow thereof by force and violence; and if you find or believe from the evidence, or have a reasonable doubt, that the defendant advocated the establishment in due time of God's Kingdom described by the defendant as Jehovah's Theocracy, as foretold in the Bible, and if you find and believe from the evidence, or have a reasonable doubt, that the defendant in advocating the establishment of such Theocracy does not urge a change in the present form of government by force and violence, you will acquit the defendant and by

your verdict say: "We the jury find the defendant not guilty."

Refused

Timely presented and refused; exception taken

Judge Circuit Court

Refused & Filed

6/30/42

R. C. Randel, Clerk.

No. 8672

IN THE CIRCUIT COURT

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)

DEFENDANT'S REQUESTED INSTRUCTION

NUMBER SEVEN

You are instructed that under Section 13 of Article 3 of the Constitution of the State of Mississippi freedom of press and of speech shall be held sacred, and the State cannot interfere with the exercise thereof so long as the individual does not advocate the overthrow of the government by force and violence.

Refused

Timely presented and refused; exception taken

Judge Circuit Court

Refused & Filed

6/30/42

R. C. Randel, Clerk.

No. 8672

IN THE CIRCUIT COURT
THE STATE OF MISSISSIPPI
V.

RALPH E. TAYLOR, *Defendant* (s)

DEFENDANT'S REQUESTED INSTRUCTION
NUMBER NINE

You are instructed that according to the case of *Ex parte Milligan*, decided by the Supreme Court of the United States during the Civil War, reported in 4 Wall. 2, 'The Constitution of the United States is a law for *rulers* and people equally in war and peace; it covers with the shield of its protection all classes of men at all times and under all circumstances. No doctrine involving more pernicious consequences was ever invented by the mind of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy and despotism. But the theory of necessity on which it is based is false for the government within the Constitution has all the powers granted to it which are necessary to preserve its existence.

Refused

Timely presented and refused; exception taken.

Judge Circuit Court

Refused & Filed

6/30/42

R. C. Randel, Clerk.

No. 8672

IN THE CIRCUIT COURT
THE STATE OF MISSISSIPPI
V.

RALPH E. TAYLOR, *Defendant* (s)

DEFENDANT'S REQUESTED INSTRUCTION
NUMBER TEN

You are instructed that regardless of how ridiculous,

unreasonable and objectionable a particular belief or practice with reference to the laws laid down by the Creator in the Bible may appear to be, to permit the judge or jury to intrude their powers into the field of opinion and to restrain the profession or propagation of principles alleged to be based on the Bible on the supposition of their ill tendency is a dangerous fallacy which destroys all freedom of worship of Almighty God. It is not for you to say that the activity of the defendants is not an act of worship.

You must assume that it is and can only convict the defendants for the exercise thereof in this case when you find or believe that they advocate the overthrow of the government by force and violence, clearly, immediately and presently.

Refused

Timely presented and refused; exception taken.

Judge Circuit Court

Refused & Filed

6/30/42

R. C. Randel, Clerk.

No. 8672

IN THE CIRCUIT COURT

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)

NUMBER ELEVEN

You are instructed that the defendant has the right to worship Almighty God according to the dictates of the heart, to adopt and to hold any opinion whatsoever on the subject of the Bible, and to do any act such as to distribute the literature in question, or to forbear to do any act such as to refuse to salute the flag of the United States, the doing or the forbearing of which does not seriously and

immediately endanger the public morals, health and safety.

Refused

Judge Circuit Court

Refused & Filed

6/30/42

R. C. Randel, Clerk.

No. 8672

IN THE CIRCUIT COURT

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)

DEFENDANT'S REQUESTED INSTRUCTION

NUMBER TWELVE

You are instructed that according to the Constitution of the State of Mississippi no defendant in a criminal case can be convicted for the crime of sedition or treason except from the mouths of two witnesses other than the defendant himself.

Refused

Refused & Filed

6/30/42

R. C. Randel, Clerk.

No. 8672

IN THE CIRCUIT COURT

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)

DEFENDANT'S REQUESTED INSTRUCTION

NUMBER THIRTEEN

Evidence has been offered that defendant takes a position of strict neutrality as to the wars between nations of the world, and because of such position he refuses to participate in any capacity for any nation in such wars. You are specially instructed that such evidence is immaterial

to the charge of sedition and should be disregarded and not considered in arriving at your verdict.

Refused

Timely presented and refused; exception taken.

Judge Circuit Court

Refused & Filed

6/30/42

R. C. Randel, Clerk.

No. 8672

IN THE CIRCUIT COURT

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)

DEFENDANT'S REQUESTED INSTRUCTION NUMBER FIFTEEN

Freedom of speech and freedom of the press are guaranteed and protected by the Constitutions of Mississippi and the United States, and this liberty is not confined to newspapers but necessarily embraces pamphlets and leaflets pertaining to matters of government and the Bible. If you find and believe from the evidence or have a reasonable doubt that defendants were engaged in activity of 'free press' and 'free speech' you will acquit the defendants and you by your verdict will say: "We the jury find the defendant not guilty".

Refused

Timely presented and refused; exception taken.

Judge Circuit Court

Refused and Filed

6/30/42

R. C. Randel, Clerk.

No. 8672
IN THE CIRCUIT COURT
THE STATE OF MISSISSIPPI
V.

RALPH E. TAYLOR, *Defendant* (s)
DEFENDANT'S REQUESTED INSTRUCTION
NUMBER SEVENTEEN

You are instructed that defendant and all other of Jehovah's witnesses have a right to call upon the people and to knock on the doors and to ring the doorbell at the homes of the people, and to bring to the attention of the people the recorded Word of God, by means of the literature which they distribute and the phonograph records which are used to reproduce recorded Bible talks; and that to knowingly and willfully endeavor to deprive them of such civil liberties guaranteed under the First and Fourteenth Amendments to the United States Constitution by color of state law would be in violation of Sections 51 and 52 of Title 18, United States Code Annotated.

Refused

Timely presented and refused; exception taken.

Judge Circuit Court

Refused & Filed

6/30/42

R. C. Randel, Clerk.

No. 8672
INSTRUCTION 18

The court instructs the jury for the defendant that it takes 12 jurors to bring in a verdict of "Guilty", and if any one of the jurors disagrees as to guilt of the defendant, then the form of the verdict should be, "We, the jury cannot agree".

Refused

Refused & Filed

6/30/42

R. C. Randel, Clerk.

No. 8672

INSTRUCTION NO. 19

The court instructs the jury for the defendant that you should bring in a verdict of "Not guilty", for the defendant and the form of your verdict should be, "We, the jury find the defendant, not guilty".

Refused

Refused & Filed

6/30/42

R. C. Randel, Clerk.

Judgment

[fol. 42]

No. 8672

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)

Now comes the State by her attorney, H. B. Gillespie, who prosecutes on behalf of the State and this defendant, R. E. Taylor in his proper person who was duly and legally arraigned charging him with teaching and distributing Seditious Literature and disrespect to the Flag of the United States of America and entered a plea of Not Guilty,

Now puts himself upon the Country, came a Jury of 12 good and lawful men composed of J. E. Johnson and eleven others who were duly and legally drawn, sworn and empaneled to try such cases as provided by the statute, after hearing the evidence of the witnesses and the arguments of the counsels and receiving the instructions of the court to consider of their verdict, presently they returned into open court and rendered the following verdict, "We, the Jury find the defendant guilty as charged".

It is ordered and adjudged by the court that this defendant, R. E. Taylor be and he is sentenced to the State Penitentiary for the duration of the war or not to exceed 10 years and that his bond is fixed at \$1500.00.

Exhibits

[fol. 43]

EXHIBIT 1

LINES USED FROM BOOK ENTITLED "REFUGEES" PAGE 6 & 7

All nations of the earth today are under the influence and control of the demons.

All the nations suffer the same fate or come to the same end, because all nations of earth are on the wrong side, that is, on the losing side. All of such nations are against the Theocratic Government, that is, the government or kingdom of the Almighty God.

. . . and all are under the control of the invisible host of demons, . . .

Exhibit 1, Mrs. Denson

6/30/42

R. S. Streit, Rep.

EXHIBIT 2

LINES USED FROM BOOK ENTITLED "LOYALTY" PAGE 8

But to compel people to salute a flag or any other image is wrong, and particularly if that person believes on God and Christ Jesus. For the Christian to salute a flag is in direct violation of God's specific commandment.

Exhibit 2, Mrs. Denson

6/30/42

R. S. Streit, Rep.

EXHIBIT 3

LINES USED FROM BOOK ENTITLED "REFUGEES" PAGES 6 & 7

ALL nations of the earth today are under the influence and control of the demons.

All the nations suffer the same fate or come to the same

end, because all nations of earth are on the wrong side, that is, on the losing side. All of such nations are against the Theocratic Government, that is, the government or kingdom of the Almighty God.

. . . all are under the control of the invisible host of demons,
Exhibit 3, Mrs. Bryant

6/30/42

R. S. Streit, Rep.

EXHIBIT I
LINES USED FROM BOOK ENTITLED
"END OF AXIS POWERS"
"COMFORT ALL THAT MOURN"
PAGE 16

Almighty God commands that they must remain entirely neutral in the controversy. Because his covenant people are servants and representatives of THE THEOCRACY they must hold themselves entirely aloof from warring factions of this world.

Exhibit I, Mrs. Joyner

6/30/42

R. S. Streit, Rep.

EXHIBIT A
LINES USED FROM BOOK ENTITLED
"GOD AND THE STATE"
PAGE 18

Non-Christians may salute the flag without reference to the foregoing rules. Those who are real conscientious Christians are in a class entirely different from others of the world. Jehovah's witnesses are Christians and in a covenant to be entirely obedient to God's law. They must teach their children and admonish them to obey God's law, as he has commanded. They are conscientious and they sincerely believe that for them to indulge in the formalism or ceremony

of saluting any flag is a violation of God's specific commandment. . .

Exhibit 2, Mrs. Bryant

6/30/42

R. S. Streit, Rep.

Exhibit 2, Joyner

6/30/42

R. S. Streit, Rep.

EXHIBIT B

LINES TAKEN FROM BOOK ENTITLED "LOYALTY"

PAGE 8

For the Christian to salute a flag is in direct violation of God's specific commandment.

Ex. 1, Mrs. Bryant

6/30/42

R. S. Streit, Rep.

Ex. 1. Taylor

6/30/42

R. S. Streit, Rep.

TODAY many are in perplexity as to what to do to protect and safeguard the interests of themselves and their children. The remedy for the present unhappy condition is the rule of the earth by righteous powers. God has made it possible to now learn just how and when such righteous rule will come into full control. The great and comforting truths in the Bible are set forth in the book entitled CHILDREN. It contains instructions for all who would be children and subjects to the great Lord and King Christ Jesus. It is not religious, but fills the sincere heart with contentment and hope. It is not a child's book, but is for adults and children as well. Here is a copy for you, and you may contribute twenty-five cents to help publish more like books. Read CHILDREN, rejoice and live.

TO WHOM IT MAY CONCERN:

This is to certify that *R. E. Taylor* whose signature appears

below, is an ordained minister of Jehovah God to preach the gospel of God's kingdom under Christ Jesus and is therefore one of Jehovah's witnesses; that he is sent forth by this Society, which is created and organized and chartered by law to preach the gospel of God's kingdom, and that Jehovah's witnesses are commanded to obey God by preaching the gospel, which commandments appear in the Bible at Isaiah 61:1,2; Isaiah 43:9-12; Matthew 24:14; Acts 20:20; 1 Peter 2:21; and 1 Corinthians 9:16; and that Jehovah's witnesses are compelled to obey God rather than men. (Acts 3:23; Acts 4:19; and Acts 5:29)

That in obedience to God's commandments Jehovah's witnesses preach the gospel and worship Almighty God by calling upon the people at their homes and exhibiting to them the message of said gospel in printed form, such as the Bible, books, booklets and magazines, and thus afford the people the opportunity of learning of God's gracious provision for them.

That said witness of Jehovah is doing this work of bearing testimony before the people in strict accord with the fundamental law of the land and in obedience to God's law, which is supreme. Any kindness and consideration shown this Jehovah will be greatly appreciated and is certain to call forth the blessing of the Lord upon the one showing such kindness. (Matthew 25:31-46)

Watch Tower Bible & Tract Society

By N. H. Knorr, President

Name Ralph E. Taylor

Address 516- 16 St. S. W.

Birmingham, Alabama.

Ex. A Cross Ex. Taylor

6/30/42

R. S. Streit, Rep.

WHY

is it that God permits "Christendom" to be distressed with war and attacks by the pagans, and with great sorrow and suffering of the people? What good purpose will this serve?

THERE IS AN ANSWER which will satisfy all honest persons. It is God's own answer from His sacred Word. To know it will bring you great relief, comfort and good hope.

Those whom Jehovah God sends forth as his witnesses are commissioned to bring His answer and message to all seeking the truth. In the face of hard times they are still able to offer this needed information in books, periodicals and recorded talks. The one presenting this can explain such provision, and it will be for your good and you are under no obligation to contribute any money. "The wise will hear." To Whom It May Concern:

This is to certify that *R. E. Taylor* whose signature appears below, is an ordained minister of Jehovah God to preach the gospel of God's kingdom under Christ Jesus and that said person is one of Jehovah's witnesses. The Watch Tower Bible and Tract Society, created and organized and chartered by law to preach the gospel of God's Kingdom, sends forth Jehovah's witnesses to do this work as commanded by the Almighty God. Jehovah's witnesses are ordained and commissioned by God and the signer of this card Scripturally claims such ordination and commission, as set forth in the Bible at Isaiah 61:1, 2; Isaiah 43:9-12; Matthew 10:7-12; Matthew 24:14; Acts 20:20; 1 Peter 2:21; 1 Corinthians 9:16. Being one of Jehovah's witnesses, the signer must obey God rather than men. (Acts 3:23; Acts 4:19; Acts 5:29) Jehovah's witnesses, in obedience to God's commandments, preach the gospel and worship Almighty God by calling upon people at their homes, exhibiting to them the message of the gospel of said Kingdom

in printed form. Bibles, books, booklets, and magazines are offered free to those that are poor, or on contribution, which contribution is accepted for the publishing of other literature so that the Word of the Lord may have greater circulation in all this work for a witness, giving other people the opportunity of learning of God's gracious provision for them. Said witness of Jehovah is doing this work of his own volition and is bearing the testimony before the people in accordance with the provisions of the fundamental laws of this land in obedience to God's commandment, which is supreme. Any kindness shown this witness of Jehovah will be greatly appreciated and is certain to call forth the blessing of the Lord upon the one showing such kindness. (Matthew 25:31-46) The Society or its appointed representatives will be pleased to furnish authoritative proof as to whether the signer of this card is one of Jehovah's witnesses.

Watch Tower Bible & Tract Society
By N. H. Knorr, President

Name Ralph E. Taylor
Address 516, 16 St. Birmingham
Alabama

Motion for New Trial

[fol. 53]

No. 8672

IN THE CIRCUIT COURT OF MADISON COUNTY,
MISSISSIPPI, FOR THE SEVENTH JUDICIAL DIST.

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant.* (s)

Comes defendant and moves the court to grant him a new trial in the above styled and numbered cause for the following reasons to-wit:

ONE

The court erred in overruling defendant's motion to quash the indictment against him.

TWO

The court erred in overruling the demurrer to the indictment against defendant.

THREE

The court erred in overruling defendant's peremptory instructions at the end of the State's evidence

FOUR

The court erred in permitting State's evidence objected to by defendant.

FIVE

The court erred in refusing evidence offered by defendant.

SIX

The court erred in refusing to grant defendant's motion for directed verdict at conclusion of all the evidence.

SEVEN

The court erred in refusing defendant's instructions No. 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 15, 17, 18, 19.

EIGHT

The court erred in granting State's Instructions No. 1.

NINE

The jury found contrary to law and evidence.

RALPH E. TAYLOR

Defendant

G. C. CLARK

Attorney for Defendant

Sworn to and subscribed before me this the 30 day of June, 1942.

R. C. RANDEL

Filed 6-30-42

R. C. Randel, Clerk.

**Order
Overruling Motion for New Trial**

[fol. 55]

No. 8672

IN THE CIRCUIT COURT OF
MADISON COUNTY, MISSISSIPPI, FOR THE
SEVENTH JUDICIAL DISTRICT

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)

The motion for a new trial duly and timely filed by defendant herein, came on for consideration and the court, after having heard argument of counsel thereon, is of the opinion that the same should be overruled. Accordingly it is hereby

ORDERED, ADJUDGED AND DECREED that said motion for new trial is overruled.

E. C. FISHEL

Judge Circuit Court Madison
County, Mississippi.

Motion for Appeal to Supreme Court

[fol. 56]

No. 8672

IN THE CIRCUIT COURT OF
MADISON COUNTY, MISSISSIPPI FOR THE
SEVENTH JUDICIAL DISTRICT

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)

Comes the above named defendant, Ralph Taylor, in the above styled and numbered cause and prays an appeal to

the next term of the Supreme Court of the State of Mississippi, and tenders herewith a good and sufficient appearance bond for such an appeal.

Ralph E. Taylor
Ralph Taylor

Filed 6-30-42

R. C. Randel, Clerk.

Petition for Appeal

[fol. 57]

No. 8672

Petition to the Circuit Clerk for an Appeal

STATE OF MISSISSIPPI

MADISON COUNTY

**IN THE CIRCUIT COURT OF MADISON COUNTY,
JUNE TERM, 1942.**

TO THE CIRCUIT CLERK OF MADISON COUNTY:

Your petitioner, the undersigned, RALPH E. TAYLOR respectfully state that at the June Term 1942, of the Madison County Circuit Court, on the 30 day of June, 1942, the above was convicted of sedition and the violation of House Bill 689 of the Regular Legislative Session, 1942, and sentenced to the State Penitentiary until the United States signs a peace treaty with Japan, Germany, and Italy not exceeding ten years. Feeling aggrieved at this conviction they pray an appeal to the Supreme Court and tender herewith, good and valid appeal bonds and affidavits of their inability to make costs bonds or to deposit sufficient amount of cash with the clerk of this Court to pay costs in this case. And ask that an appeal be granted.

RALPH E. TAYLOR
RALPH TAYLOR
BY G. C. CLARK

Attorney for Defendant

Filed 6-30-42

R. C. Randel, Clerk.

Affidavit of Inability to Give Bond

[fol. 58]

No. 8672

APPEAL ON AFFIDAVIT OF INABILITY TO GIVE COST BOND OR DEPOSIT AMOUNT OF COSTS FROM CIRCUIT COURT IN CRIMINAL CASES

STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)

THE STATE OF MISSISSIPPI
MADISON COUNTY

IN THE CIRCUIT COURT OF MADISON COUNTY,
JUNE 1942 TERM

I, RALPH TAYLOR do solemnly swear that I am unable to give a cost bond or to deposit a sufficient amount to cover all costs, and feeling aggrieved by the judgment and conviction of violating House Bill 689 of the Regular Legislative Session, 1942, and sentence to the State penitentiary until a treaty of peace is signed with Japan, Germany and Italy, not to exceed ten years, as rendered against me in the Circuit Court of Madison County at the June Term, 1942, on the . . day of June, 1942, I desire an appeal to the Supreme Court with stay of Judgment.

Ralph E. Taylor

Ralph Taylor

Sworn to and subscribed before me this the 30 day of June, 1942.

Robert C. Randel

Circuit Clerk.

Filed 6-30-42

R. C. Randel, Clerk.

Appearance Bond

[fol. 59]

APPEARANCE BOND ON FELONY CASES (Sec. 46 and 47, Miss. Code, 1930)

**IN THE CIRCUIT COURT OF
MADISON COUNTY, MISSISSIPPI,
SEVENTH JUDICIAL DISTRICT,
JUNE TERM, 1942.**

KNOW TO ALL MEN BY THESE PRESENTS:

That we, Ralph E. Taylor, Principal and G. C. Clark, JIM G. MOZINGO, SAM CLARK, JACK CLARK and H. G. CLARK, sureties, all residents of the state of Mississippi, are firmly bound unto the State of Mississippi in the penal sum of \$1500, for which payment well and truly to be made, we jointly and severally bind ourselves, our heirs, executors and administrators forever.

The condition of the foregoing obligation is such that, whereas in the Circuit Court of Madison County, Mississippi on the 30 day of June, 1942, the defendant, Ralph E. Taylor was convicted of the alleged crime of violating House Bill 689 of the Regular Legislative Session, 1942, and sentence to serve in the State penitentiary until the United States signs a treaty of peace but not to exceed a term of ten years. And the said Ralph E. Taylor feeling aggrieved by such conviction and sentence has prayed and obtained an appeal to the Supreme Court.

Now if the said Ralph E. Taylor shall appear in the Supreme Court and Circuit Court and abide by and perform such sentence and judgment as may be rendered in

this case, then this obligation to be void, otherwise to remain in full force and effect.

Ralph E. Taylor
Principal
G. C. CLARK
JIM G. MOZINGO
SAM CLARK
JACK CLARK
H. G. CLARK
SURETIES

OATH OF SURETIES
(Sec. 30, Miss. Code, 1930.)

State of Mississippi
County of Wayne.

Personally appeared before me, the undersigned authority in and for said County and State the Sureties on foregoing bond G. C. CLARK, JIM G. MOZINGO, SAM CLARK, JACK CLARK and H. G. CLARK sureties on the foregoing bond, who first by me being duly sworn, state on oath that they are worth more than \$1500 in visible property, subject to execution, over and above their legal exemptions and liabilities.

G. C. CLARK
JIM G. MOZINGO
SAM CLARK
JACK CLARK
H. G. CLARK

Sworn to and subscribed before me, this the 1st. day of July, 1942.

E. E. SIGLER
Notary-- Chancery Clerk
S. B. DAWS, D. C.

8672

Filed July 3, 1942
R. C. Randel, Clerk.

Notice to Court Reporter of Appeal

[fol. 61]

No. 8672

IN THE CIRCUIT COURT OF
MADISON, COUNTY, MISSISSIPPI, FOR
THE SEVENTH JUDICIAL DISTRICT

THE STATE OF MISSISSIPPI

V.

RALPH E. TAYLOR, *Defendant* (s)

NOTICE TO THE COURT REPORTER TO PREPARE RECORD FOR SUPREME COURT

I do hereby, hand you this notice to prepare record for Supreme Court from your stenographic notes in the above styled and numbered cause.

The defendant has prayed and obtained an appeal, in this case.

This the 30 day of June, 1942.

Ralph E. Taylor

Ralph Taylor

DEFENDANT

The foregoing bond approved this the 3 day of July, 1942.

C. H. JAMES

Sheriff of Madison County.

Transcript of Testimony

[fol. 62-182]

IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

THE STATE OF MISSISSIPPI

V.

R. E. TAYLOR, *Defendant* (s)

No. 8672

A P P E A R A N C E S:

Hon. H. B. Gillespie, District Attorney,

Hon. Nelson Cauthen, County Attorney,

Present and representing the State;

Hon. G. C. Clark, of Waynesboro, Mississippi,

Present and representing the Defendant.

BE IT REMEMBERED that on, to-wit the 30th day of June, 1942, the same being one of the days of the regular June Term of the Circuit Court of Madison County, Mississippi, for the year aforesaid, the above entitled cause came on for hearing before the HONORABLE E. C. FISHEL, Special Judge, and a jury duly empaneled herein, the following proceedings were had and entered of record:

MRS. HOUSTON BRYANT was called as a witness on behalf of the State, having been first duly sworn, and testified as follows:

DIRECT EXAMINATION

BY MR. GILLESPIE:

Q Will you give your name to the stenographer, please?

A Mrs. Houston Bryant.

Q Mrs. Bryant, where do you live, please?

A I live out on the old 16 Highway.

Q That's in Madison County, Mississippi, is it?

A Yes, sir.

Q How long have you lived out there?

A About three months, I suppose.

Q About three months?

A Yes, sir.

Q I will ask you if you know the defendant in this case, Mr. Taylor—this gentleman sitting back here?

A Yes, sir.

Q When did you first meet him, if you remember?

A He came to our home along sometime in the last of May.

Q In the latter part of this past May?

A Yes, sir.

Q Did you then have a conversation with him?

A Yes, sir; he was distributing literature.

Q What was his purpose in coming to your house?

A Selling literature.

Q Selling literature?

A Yes, sir.

Q Did you take some of his literature—pamphlets?

A Yes, sir; we bought two books at that time.

Q At that time?

A Yes, sir.

Q Now, did you later see him, Mrs. Bryant?

A Yes, sir; I was in the home of Mrs. T. K. Joyner.

Q Where does Mrs. Joyner live with reference to your home?

A She lives just across the road from my home.

Q Across the road?

A Yes, sir.

Q Approximately, when was it that you saw this man at Mrs. Joyner's home?

A It was along in the first part of June.

Q Some few days or a week after you had seen him at your home?

A Yes, sir.

Q What was he doing at Mrs. Joyner's home? What was his purpose in being there?

A Well, he had bunches of literature that was already sorted out, twenty-two books in the set.

Q Did you or not secure some of the books then?

A Yes, sir; I bought twenty-two.

Q Did anyone else get any of the literature there at that time?

A Yes, sir; Mrs. Joyner bought twenty-two.

Q Now, did you have a conversation with this man, or did you hear a conversation with him there at Mrs. Joyner's house?

A Yes, sir; I heard it.

Q I want you, in your own way, to tell the jury what that conversation was, if you can—just the best you remember?

A Well, the first time he came to our home he had those books, and he said he was not selling books for a living; said he was selling those—distributing those books for the people to live by, and to teach their children by.

Q That was on the visit to your house?

A Yes, sir.

Q Then, later, on the meeting up at Mrs. Joyner's house, what, if anything, did he say?

A Well, he said it was wrong for our President to send these boys across in uniform to fight our enemies; said it was wrong to fight our enemies; said they were being shot down for no purpose at all; said Hitler would rule, but he wouldn't have to come here to rule; and he said the quicker the people here quit bowing down and worshipping and saluting our Flag and Government, the sooner we would have peace.

Q What was it you said about it being wrong to fight our enemies?

A He said it was wrong for us to fight our enemies; that we were being shot down for no purpose at all.

Q Did you or not at that time hear any statement from him to Mrs. Joyner to the effect that her boy may have thought that he was doing the right thing?

A Yes, sir; he said he may have thought he was doing the right thing by going over there and fighting for his country.

Q But what did he say about whether it was right or wrong?

A He said that it was wrong.

Q Now, do you recall any other statements that he made to you, or to Mrs. Joyner, there at that time?

A I guess that's about all.

Q Now, you say you got some of these books, did you?

A Yes, sir.

BY MR. CLARK:

We object to the introduction of those books.

BY THE COURT:

Let the jury retire into this jury room.

The jury here retired by order of the Court, and in the absence and out of the hearing of the jury, the following proceedings were had and entered of record:

BY THE COURT:

Now, let us hear the objections, and let's see the book you are proposing to introduce in the absence of the jury.

BY MR. GILLESPIE:

Now, we expect to introduce by this witness a book entitled "Loyalty", and published by the Watch Tower Bible and Tract Society, containing the following sentence on page 8:

"For the Christian to salute a flag is in direct violation of God's specific commandment."

And also a pamphlet entitled "Refugees".

BY THE COURT:

Are those named in the indictment, as well as quoted from?

BY MR. GILLESPIE:

That's true. Entitled "Refugees", published by the Watch Tower Bible and Tract Society, and contains the following paragraphs:

"All nations of the earth today are under the influence and control of the demons."

"All the nations suffer the same fate or come to the same end, because all nations of earth are on the wrong side, that is, on the losing side. All of such nations are against the THEOCRATIC GOVERNMENT, that is, the government or kingdom of the Almighty God."

"... all are under the control of the invisible hosts of demons."

Q In addition to these two books, did you get other books?

A Yes, sir.

Q Do you recall the title?

A No, sir. There was a bunch of them, but those two, "Loyalty" and the one "God and the State", he pointed out to us to be sure and study.

Q Did you get a book entitled "God and the State"?

A Yes, sir.

BY THE COURT:

Is that "God and the State" referred to in the indictment?

BY MR. GILLESPIE:

Yes, sir. Published by the Watch Tower Bible & Tract Society, at page 18, the following paragraphs:

"Non-Christians may salute the flag without reference to the foregoing rules. Those who are real conscientious Christians are in a class entirely different

from others of the world. Jehovah's Witnesses are Christians and in a covenant to be entirely obedient to God's law. They must teach their children and admonish them to obey God's law, as he has commanded. They are conscientious and they sincerely believe that for them to indulge in the formalism or ceremony of saluting any flag is a violation of God's specific commandment."

Those are the pamphlets and the paragraphs we intend to offer.

BY MR. CLARK:

Our objection to that is, it does not sufficiently identify the book; and he didn't sufficiently point out the page and the paragraph, and he took isolated passages from the books in question, which does not give the purport of the teachings of the booklets as a whole. I will agree, if he will agree to have the whole book read, or allow the witness to read the book to the jury, I will withdraw the objection; otherwise, I will not.

BY MR. GILLESPIE:

No, sir; I don't propose to offer the whole book. We have not got more than a month to finish this trial, and I am only referring to those passages we contend are disloyal, and I would rather proceed in my own way; I am offering the book and the passage I want to offer, and I am not offering anything else.

BY THE COURT:

I am going to overrule his objection, but for the life of me I don't see why you want it overruled.

BY MR. GILLESPIE:

If the Court please, in view of the fact that this indictment charges the distribution of this literature containing these particular paragraphs, and in view of the fact that the matter has to be presented to the jury, and the jury could convict on one and not on the other, on either one of them, I believe it is best for us to introduce the books.

BY THE COURT:

Let them be introduced as soon as the jury returns.

BY MR. CLARK:

I don't object to that, if they let read the whole book.

BY MR. GILLESPIE:

We will cover that when we get to it.

BY THE COURT:

All right; I will overrule the objection. Let the jury return.

The jury here returned by order of the Court, and in the presence and hearing of the jury, the following further proceedings were had and entered of record:

BY MR. GILLESPIE:

We offer in evidence the pamphlet entitled "Loyalty", published by the Watch Tower Bible and Tract Society; that is, we offer this sentence from this book on page 8:

"For the Christian to salute a flag is in direct violation of God's specific commandment."

I don't believe I identified this book.

Q State to the jury whether or not that is one of the pamphlets that Mr. Taylor was distributing?

A Yes, sir; this was in the last bunch.

BY THE COURT:

That is marked—

BY MR. GILLESPIE:

Let this be marked Exhibit "1".

Said pamphlet was identified by the Reporter as Exhibit "1", Witness Mrs. Bryant, and is in words and figures as follows:

BY MR. GILLESPIE:

I hand you a book entitled "God and the State". State to the jury whether or not that is one of the books that was distributed by Mr. Taylor and secured by you?

A Yes, sir; we bought this in the bunch where there were

twenty-two; and these are the two books he referred to and wanted us to study them especially.

Q And this pamphlet entitled "Refugees"—

A (Interrupting) Yes, sir; we got this one with the blue book the first time he came.

BY MR. GILLESPIE:

I want these three books identified as Exhibits "1", "2" and "3", respectively.

Said documents were identified by the Reporter as Exhibits "1", "2" and "3" respectively,

Witness Mrs. Bryant.

BY MR. GILLESPIE:

We offer, if the Court please, the following paragraph from the pamphlet entitled "God and the State", on page 18, which reads as follows:

"Non-Christians may salute the flag without reference to the foregoing rules. Those who are real conscientious Christian Christians are in a class different from others of the world. Jehovah's witnesses are Christians and in a covenant to be entirely obedient to God's law. They must teach their children and admonish them to obey God's law as he has commanded. They are conscientious and they sincerely believe that for them to indulge in the formalism or ceremony of saluting any flag is a violation of God's specific commandment."

Q Was this one of the books that Mr. Taylor told you to study specifically?

A Yes, sir.

BY MR. GILLESPIE:

Now, we offer paragraph on page 6 of the pamphlet marked "Refugees"—pages six and seven, which reads:

"All nations of the earth today are under the influence and control of the demons . . . "

"All the nations suffer the same fate or come to the same end, because all nations of earth are on the

wrong side, that is, on the losing side. All of the nations are against the Theocratic Government, that is, the government or kingdom of the Almighty God. . . . all are under the control of the invisible host of demons."

Q Did you read those passages, Mrs. Bryant?

A Yes, sir.

Q Do you know of any other parties to whom this literature—among whom this literature was distributed?

A Mrs. Denson and Mrs. Joyner.

Q Now, I believe you stated you were at your home and at Mrs. Joyner's home when these oral statements were made to you and when these books were distributed to you? Is that true?

A Yes, sir.

Q And your home and Mrs. Joyner's home are both in Madison County, Mississippi, are they?

A Yes, sir.

Q You live near the edge of Canton here, on old Highway 51? A Sixteen.

BY MR. GILLESPIE:

That's all.

BY THE COURT:

For my own mind, what date does she fix this as?

BY MR. GILLESPIE:

She fixes it as the latter part of May of the first meeting, and the 2nd day of June for the meeting at Mrs. Joyner's, in this year. She testified to that.

CROSS EXAMINATION

BY MR. CLARK:

Q Mrs. Bryant, when did you first see Mrs. Taylor?

A The latter part of May, when he came to our home.

Q Will you tell as near as you can what took place at that time?

A Well, he brought a little Victrola and played us a rec-

ord, and then he had a magazine he wanted us to take for a dollar, but we didn't take it; we bought the Blue Book and the "Refugees" with the Blue Book. He told us he was not selling books to make a living, he was selling them to teach people the right way to live and how to bring their children up.

Q You say he brought a Blue Book. Is this the book he brought at that time?

A Yes, sir.

Q And did you get those books at the time?

A I got the one entitled "Refugees" with that Blue Book.

Q Got the book entitled "Refugees" with that Blue Book?

A Yes, sir.

BY MR. CLARK:

I would like to introduce this book "Children".

BY MR. GILLESPIE:

We object to the introduction of this book, because it is not pertinent to the charge.

BY THE COURT:

You can have the book identified, but unless you show some further cause I would sustain the objection. I cannot see the relevancy of it. The Encyclopaedia would be as relevant as that book.

BY MR. CLARK:

Identify this as "Children", published by the Watch Tower Bible and Tract Society, 117 Adams Street, Brooklyn, New York.

Said book was identified as Exhibit "1" on cross examination, Witness Mrs. Bryant.

Q Did he give you any questions on it?

A No, sir.

Q What were the first words on that occasion he stated to you?

A The first time he called at my home?

Q Yes.

A He said he had a record that he wanted to play for us.

Q Did he mention Hitler in any way?

A No, sir; not the first time.

Q Did he mention Mussolini of Italy, or the Pope of Italy?

A No, he didn't; he did in the record; he talked about the dictator.

Q Was he in favor of the dictator?

A The last time, he came to Mrs. Joyner's, he must have been in favor of them.

Q How about the first time?

A He didn't mention much about it the first time, only he wanted me to read those two books and follow them, and live right and teach our children as those books said.

Q Isn't it a fact this "Children" book was the one he mentioned for you to study and read in particular? Isn't it a fact he did tell you that's the book he wanted you to study? Isn't that true?

A He said that one too.

Q Has anyone told you that Mr. and Mrs. Taylor are against the Government?

A No, sir; but they talked like it in the home of Mrs. Joyner.

Q But what about at your home?

A They didn't say much about it, only what I told you.

Q Tell me just what they did say?

A When at Mrs. Joyner's?

Q At your home?

A He just told me to take those two books, and that he wasn't selling those books to make money or make his living; said he was selling them to teach the people the right way to live, and how to teach their children.

Q That was in connection with this book?

A That one too.

Q Who first told you these people were against the Government, Mrs. Bryant?

A Well, we had the books there, and I was at Mrs. Joy-

ner's when I found it out, and Mr. O'Neal come over there and he told us what those books were.

Q What did he—Mr. O'Neal was the first one?

A Yes, sir.

Q What did he say they were?

BY MR. GILLESPIE:

We object to that.

BY THE COURT:

The objection will be sustained.

BY MR. CLARK:

Q Well, did anybody tell you they were Nazi agents or German agents?

A Sir?

Q Did anybody tell you they were German agents—did they tell you or anybody else?

A No, they didn't tell me.

Q Well, did anybody tell you?

A No.

Q Did anybody tell you they were not Christian people?

A No.

BY MR. GILLESPIE:

We object to that.

BY THE COURT:

The objection is sustained; that would be hearsay.

BY MR. CLARK:

Q Did Mr. Taylor tell you, Mrs. Bryant, that he was a minister or preacher of the gospel?

A He said he was preaching the Lord's word.

Q Did he quote any of the Bible passages while he was at your home?

A He might have.

Q Well, would you say he did or didn't?

A He quoted a few.

Q About how long did he stay there?

A About twenty minutes.

Q Did you invite him back to your home?

A No, sir.

Q There was nothing said that would make you think he was disloyal at that time?

A I wasn't thinking anything about him being disloyal the first time he came.

Q How many books and booklets did he have besides those, did he have this one?

A The first time he came?

Q Yes.

A Those were the only two I bought.

Q Those two?

A Yes, sir.

Q Where did you get those two?

A I bought those at Mrs. Joyner's the last time he came.

Q Had you ever heard of Jehovah's Witnesses before Mr. Taylor came there?

A Yes, sir.

Q Who else was present at that time, at the time of the first visit he made?

A My husband.

Q Has he ever been in your home any since?

A No, sir.

Q Did he mention the war the first time?

A Yes, sir; he said this was the last war.

Q The last war?

A Yes, sir.

Q Did he say who would win the war?

A The last time he came, he said Hitler would win the war—said he would rule.

Q Did he say he would win the war?

A He said it was the last war; if he was going to rule it would have to be.

Q That is something you concluded, isn't it, that it would have to be that he would win the war?

A If it was the last war and he was going to rule it would

have to be.

Q Did you believe what he said about it?

A The first time?

Q Did he say that the first or last time?

A No, sir; the last time.

Q The first time, did you believe some of the things he said were true?

A Yes, sir; I believed it to be true; but he said the first time this was the last war, the first time he came to my home.

Q Did he say it was mentioned in the Bible?

A I just don't remember.

Q But you do remember he said it was the last war?

A Yes, sir.

Q But he didn't say Hitler was going to win the war then?

A No, sir; he didn't say it then.

Q How come him to mention it at the last place? How did he approach you at that time? Now, we will leave your first visit—forget that, and come up to Mrs. Joyner's house, and I am asking you about that. I don't want to confuse you, little lady?

A You won't.

Q I want to know the truth. How come him to mention Hitler at all there?

A He was talking about the war.

Q Tell us the words he said then just before he came up to Hitler?

A I don't remember exactly, for I was listening to hear him say Hitler was going to win.

Q You were figuring he was going to say that?

A Yes, sir.

Q Somebody told you he was going to say that?

A Mr. O'Neal told us these books were against our Government, the first ones he sold.

Q And you were listening for that, but you don't remember anything he said just before that?

A No, sir; I don't remember what he said.

Q Do you remember anything just after it?

A He said Hitler would rule, and he wouldn't have to come here to do so.

Q What else did he say?

A He said the sooner the people quit bowing down and saluting and worshipping the Flag and the Government, the sooner we would have peace.

Q And what else did he say?

A He said that we looked upon the Flag and the Government as something sacred.

Q And what else did he say?

A I believe I have told you about the most interesting points.

Q Now, any other points he said about anything else besides those things there that day? What else did he say, that that is in the indictment or anything else?

A I can't remember everything.

Q You just know what is in the indictment?

A Yes, sir.

Q Who else heard him make those statements?

A Mrs. Joyner, and his wife, and there were two children there.

Q How come Mr. Taylor up at Mrs. Joyner's?

A He said he came there to comfort her, as she lost her son in the war.

Q Who said that?

A Mr. Taylor and Mrs. Taylor, both.

Q Said they came to comfort her?

A Yes, sir.

Q And isn't it a fact he discussed the Bible at length with you there that day? Didn't he say—quote Daniel 2: 44?

A I don't know.

Q See if he said this: "In the days of these kings shall the God of Heaven set up a kingdom"?

A I don't remember.

Q "And he will break in pieces and consume all of those kingdoms, and his kingdom shall stand forever"?

A I don't know.

Q But you do very well remember the others?

A Yes, sir; I remember it.

Q Did he tell you that the Bible taught Hitler would rule?

A No, sir.

Q Yes, you are sure he said to comfort her, and yet told her Hitler would win the war?

A He said they were over there being shot down for nothing.

Q That's something else you remember now?

A Yes, sir; he said it was wrong for the President to put the boys in uniform and send them across to be shot down for nothing at all.

Q I thought a while ago you said those were all the things you remembered? Those things were added on to that?

A That's what I told the jury a while ago.

Q Who else heard him make that statement?

A Mrs. Joyner and his wife.

Q And who else?

A Myself.

Q And anybody else?

A No, sir.

Q Did you invite him to your home?

A No, sir.

Q You never invited him to your home?

A No, sir.

Q How long was he there before he talked about the war—when he went over, I mean, at Mrs. Joyner's house?

A Just a few minutes.

Q Did he offer you any card, or any little yellow card?

A He didn't me.

Q Did he play a phonograph record there?

A No, sir.

Q Didn't play any phonograph at Mrs. Joyner's?

A No, sir.

Q Did he play any at your house?

A Yes, sir.

BY MR. CLARK:

I want to introduce that phonograph record, to see if that's the one he played.

BY MR. GILLESPIE:

We object to that.

BY THE COURT:

The objection will be sustained.

BY MR. CLARK:

Q Did he play any records at Mrs. Joyner's?

A No, sir.

Q You have heard quite a few people tell you that Jehovah's Witnesses are disloyal lately besides Mr. O'Neal?

A They haven't said anything about Jehovah's witnesses being disloyal—what they are preaching against our Government.

Q Except Mr. O'Neal?

A There have been several I have talked to.

BY MR. GILLESPIE:

I don't think it makes any difference who she had heard say these things.

BY THE COURT:

She has already answered. I think the objection would be sustained, but she has already answered.

BY MR. CLARK:

Q Did you read the book "Refugees" through?

A I read some of it; I didn't read all of it.

Q What page was that disloyal statement at? Will you read to the jury the first page of it?

A What do I want to read that for?

Q Well, I ask you to read it?

A I don't need to read it.

Q Well, when Mr. Taylor first came to your house, did you become against him that time, or was it later?

A Sir?

Q Did you become prejudiced against Mr. Taylor and the books the second time or the first time?

A I had already become against him before he came the second time.

Q What caused that?

A Because of what he says against our government.

Q Did you construe the book—did it make you against the Government? Did it make you feel against the Government?

A Me against the Government?

Q Yes.

A No, sir.

Q Did it make you respect the Flag less?

A No, sir.

Q Did it make you love the Government more or less when you read these books?

A I loved it more.

Q Up at Mrs. Joyner's, can you tell—I don't know whether I got this to you a while ago or not—but can you tell exactly what Mr. Taylor said before he began discussing Hitler up at Mrs. Joyner's? Were you there when he came in? A Yes, sir.

Q Did Mrs. Joyner invite you?

A No, sir. I just live across the road from her, and go there every day.

Q And you had gone over there?

A Yes, sir; before they came.

Q And when they came in, what did they say the first thing?

A Said they came over to comfort her.

Q And that was all?

A About her son being killed—wanted to talk to her; and he said he had these books that he showed us.

Q How many books did he have there on that occasion? Any of these?

A Yes, sir; I have got twenty-two of them, and she has

got twenty-two.

Q And yet you mean to tell the jury—Did you mean to tell the jury a while ago you got against the Government before you went up there?

A Against the Government?

Q Or against these books before you went up there?

A Yes, sir; I was against them.

Q How come you to take the 22?

A Because I was asked to take them.

Q Who asked you to take them?

A I don't believe I will tell you.

Q Yes; I want you to tell who asked you to take them?

A Mr. O'Neal and Mr. Cauthen.

Q Who is Mr. O'Neal?

A Mr. Vallia O'Neal, is all I know.

Q Do you know whether he is an official in the American Legion or not?

A Yes, sir; he certainly is.

Q What is he? What office does he occupy, if any, in the organization, or the county officials in this county, if you know?

A Who, Mr. O'Neal?

Q Yes.

A I don't guess he occupies any.

Q What place does Mr. Cauthen occupy?

A County Attorney.

Q And you were sent up there to get these books? Is that right?

A I wasn't sent up there; I was already up there.

Q Well, when had they told you to get those books?

A When we got those others and found out what it was, they told us to get them all—all that we could.

Q All that you could?

A Yes.

Q And then is that when you got the 22—the two bottom ones and twenty other ones?

A Yes, sir; the last time.

Q Did you get this book—a book like that—at that time?

A I don't know whether there was one in the bunch like that or not.

Q You don't remember seeing that one before?

A No, sir.

Q Where are those other twenty?

A I turned them over to Mr. O'Neal.

Q Mr. O'Neal has got them? Is Mr. O'Neal a minister?

A No, sir.

Q Is he a Catholic?

A I don't know what he is. I don't think he is.

Q How come Mr. Taylor to just jump right out and tell you about Hitler? Can you explain that?

A He just led up to it the last time when we was up to Mrs. Joyner's. He just led up to it in his conversation.

Q Isn't it a fact he told you, little lady, the Kingdom of God was coming to the world; that there would be a kingdom of righteousness here?

A I don't remember.

Q You don't remember he told you there would be a Theocratic government here established on the earth, and that this would be the last war?

A He said this was the last war.

Q And didn't he say that God would set up a Kingdom here?

A I don't remember what he said.

Q But you do remember that he said Hitler would win the war?

A Yes, sir.

Q You have heard other people discuss the war?

A Yes, sir.

BY MR. CLARK:

[BY MR. GILLESPIE:]

We object to that; we are not trying anybody else.

BY MR. CLARK:

I would like to ask if she can remember what others said about the war.

BY THE COURT:

I will overrule the objection on the ground that he may have a right to test her memory.

BY MR. CLARK:

Q Do you remember what Mrs. Taylor said in regard to the war?

A She didn't have much to say. He was doing most of the talking.

Q Did she say anything about the war?

A She put in every once in a while.

Q What words did she put in?

A I don't know; mostly she was helping talk about the price of the books.

Q How much did she get for the 22 books?

A Thirty-five cents.

Q 22 little books for 35 cents?

A Yes, sir; she said they were originally a nickel a piece.

Q How much did she get for this book, and those two little books there?

A I think they sold for 25 cents.

Q The two together?

A Yes, sir.

Q Could you be mistaken about which one of them said Hitler would win the war?

A No, sir; he said it.

Q Did he say, little lady, that the people ought not to bow to the Flag?

A He said it was wrong. He said we looked upon the Flag and our Government as something sacred.

Q And who did he think we should worship, Hitler?

A I don't know; I guess so.

Q You don't remember everything in ordinary conversation you hear people say, do you?

A No, sir; I don't remember all he said.

Q But you do remember all those words?

A Yes, sir; I remember those.

Q And you know those are the exact words he said?

A Yes, sir; as near as I can remember.

Q Could you be mistaken at all?

A No, sir.

Q Could you have misunderstood what he was trying to say to you?

A No, sir; for I was sitting there listening for these things he said.

Q You were sitting there listening for these things he said?

A Yes, sir.

Q Did Mrs. Taylor say that we worshipped the Flag?

A She didn't have much to say about it.

Q Did she say a thing against the Government?

BY MR. GILLESPIE

We object to what she said.

BY MR. CLARK:

That is to test her memory.

A What did she say exactly?

A I don't remember exactly.

Q Did she tell you that you worshipped the Flag?

A No, sir; she didn't tell me I worshipped it.

Q Did she tell either of you ladies you were flag worshippers?

A I don't know; she didn't at Mrs. Joyner's.

Q Did she say anything about the boys that lost their lives at Pearl Harbor?

A Yes, sir.

Q What did she say?

A She was talking about them; she said that it would hurt German mothers just as bad as it would these mothers here for losing their sons.

Q Did she say that the boys would—they would see them

any more, or anything like that?

A They said they would see them some more; that when this was over they would come back to earth and live like they did before they were killed.

Q Did she say those exact words?

A Yes, sir.

Q That they would come back to earth and live like they did before they were killed?

A Yes, sir.

Q You are sure those are the words they said?

A Yes, sir.

Q Which one said that, Mr. Taylor or Mrs. Taylor?

A Both of them said it.

Q Which one of them said that first?

A Mr. Taylor.

Q And then Mrs. Taylor?

A Yes, sir.

Q Corroborated it?

A Yes, sir.

Q Did they say those words in the presence of Mrs. Joyner?

A Yes, sir.

Q And who else?

A That's all; just us two.

Q Nobody was present but you and Mrs. Joyner at that meeting?

A No, sir.

Q Wasn't this just a general discussion about religious matters?

A Not exactly; they were talking more about the war than most anything.

Q Well, didn't that talk about the war grow out of the fact that the boys had been killed?

A Well, he said he come there to comfort her about her son being killed. He never offered to pray while he was there in her home to comfort her; and if I am not badly mis-

taken, he didn't read many passages from the Bible.

Q But he did read some passages in the Bible?

A I don't remember him reading a one there.

Q But he did say they would come back alive some day?

A Come back here on earth and live like they did before they were killed.

Q He told you the Bible taught that?

A He didn't tell me the Bible taught it either.

Q Did he have a Bible with him?

A Yes, sir; he had a Bible just sitting there turning through it.

Q These statements that— who taught you these statements— who first repeated those statements to you that you allege Mr. Taylor said? Where did you first hear those statements?

A Where did I first hear them?

Q Yes.

A I heard him say them.

Q Who else said them after he said them?

A Those statements I said?

Q Yes.

A I just said them myself, about him saying it; we talked over it.

Q Who did you first tell those things to?

A My husband.

Q Who else did you talk to about it?

A We talked about them to Mr. O'Neal.

Q And then Mr. Taylor and his wife were arrested and came to the preliminary hearing— that happened next?

A I guess so.

BY MR. CLARK:

That's all.

(WITNESS EXCUSED)

MRS. T. K. JOYNER was hereupon called as a witness on behalf of the State, having been first duly sworn, and testified as follows:

DIRECT EXAMINATION

BY MR. CAUTHEN:

Q You are Mrs. T. K. Joyner?

A Yes, sir.

Q Mrs. Joyner, where do you live?

A About two miles out from the Old Sharron Road.

Q That's in Madison County, Mississippi?

A Yes, sir.

Q Mrs. Joyner, do you know the defendant, Mr. Taylor?

A Yes, sir.

Q About when, Mrs. Joyner, did you first see the defendant? A It was the second day of June.

Q Where was he, Mrs. Joyner?

A He came to my house, he and his wife and little girl.

Q Now, Mrs. Joyner, just tell the jury in your own words, what he did when he came to your house?

A Well, he came in and said he wanted to talk with me; and they came in and sat down and he began to talk, and looked through the Bible; he didn't read any in the Bible, but just turned through it, and talked; and told me that the President was doing wrong to send our boys across to be killed for nothing, and that Hitler would rule, and he wouldn't have to come over here to do it, but he would do it; he would rule, but he wouldn't come here. And he said it was wrong for us to salute the Flag; that we just worshipped our Government and our Flag, and looked on it as something sacred; and that it was wrong for us to do that; and that no doubt my son thought he was doing the right thing by going where he was and doing what he did; but that it was wrong for him to fight the enemies, and to go there.

Q Mrs. Joyner, was your son killed, and where was he?

A He was a radio operator in a B-18 Bomber at Hickman Field, and was killed December 7th, as he was getting ready to go out.

Q That was at Pearl Harbor?

A Yes, sir; at Pearl Harbor.

Q And he was at that time in the United States of America air Force?

A Yes, sir; had been there two years and ten days.

Q Did he sell you any books, Mrs. Joyner?

A Yes, sir; he sold me 22 books.

Q Are these—I will hand you one book “End of the Axis Powers—Comfort All that Mourn”, published by the Bible Tract Society, Incorporated, International Bible Students Association—did he sell you that book, Mrs. Joyner?

A He did.

BY MR. CAUTHEN:

I will introduce that as Exhibit “1” to Mrs. Joyner’s testimony, this part I am going to read:

BY MR. CLARK:

I want to renew the objection for the same reason I did to start with.

BY THE COURT:

I will overrule the objection.

BY MR. CAUTHEN:

Q Is this passage in the book that you had identified: “Both of the ‘kings’ fight desperately for world domination.” And then starting here: “Almighty God commands that they must remain entirely neutral in the controversy. Because his covenant people are servants and representatives of The Theocracy they must hold themselves entirely aloof from warring factions of the world?”

A It was.

Q Was that in the book?

A Yes, sir.

BY MR. CAUTHEN:

We will introduce that part of the book that was read

in evidence as Exhibit "1" to Mrs. T. K. Joyner's testimony. That is on page 16.

Said book was identified as Exhibit "1", Witness Mrs. Joyner, and is in words and figures as follows:

Q Mrs. Joyner, I have a book here entitled "God and the State"—

A Yes, sir.

Q It was published by the Watch Tower Bible and Tract Society, Incorporated, International Bible Students Association; where did you get that book, Mrs. Joyner?

A I bought it from Mr. Taylor.

Q At what time did you buy it?

A On the morning of June 2nd.

Q What year, this year?

A 1942.

BY MR. CLARK:

I want to object to that for the same reason.

BY THE COURT:

Let the objection be overruled.

BY MR. CAUTHEN:

Q Mrs. Joyner, I read a passage on page 18:

"Non-Christians may salute the flag without reference to the foregoing rules. Those who are real conscientious Christians are in a class entirely different from others of the world. Jehovah's witnesses are Christians and in a covenant to be entirely obedient to God's law. They must teach their children and admonish them to obey God's law, as he has commanded. They are conscientious and they sincerely believe that for them to indulge in the formalism or ceremony of saluting any flag is a violation of God's specific commandment."

Is that passage in this book entitled "God and the State"?

A Yes, sir.

BY MR. CAUTHEN:

We want to introduce as Exhibit "2" to Mrs. Joyner's testimony the part of the book "God and the State" that has just been read.

Said book was identified as Exhibit "2", Witness Joyner, and is in words and figures as follows:

Q Mrs. Joyner, did he sell other books to you?

A Yes, sir.

Q Of this nature?

A Yes, sir.

Q Do you know of other people he sold books to besides yourself?

A He sold them to Mrs. Bryant in my house.

Q Do you know of anybody else he sold them to? I mean besides you and Mrs. Bryant?

A He sold them to Mrs. Denson.

BY MR. CAUTHEN:

Take the witness.

CROSS EXAMINATION

BY MR. CLARK:

Q This is Mrs. Joyner?

A Yes, sir.

Q How many times, Mrs. Joyner, did Mr. and Mrs. Taylor come to your home?

A Well, Mrs. Taylor came once— I mean twice, and Mr. Taylor once.

Q When Mrs. Taylor came, did she say anything against the Government?

A Well, the first time she didn't.

Q Did she say anything in favor of Hitlerism, or Hitler?

A Not the first time; it wasn't mentioned.

Q Did she ever say anything in favor of Hitler, or Hitlerism, or totalitarianism?

A She asked more than once to study this literature and to believe in it.

Q What literature was she referring to?

A This.

Q Did she offer you this book?

A Yes, sir; and another one we had named "Hope".

Q Did you buy them from Mrs. Taylor or Mr. Taylor?

A Mrs. Taylor.

Q The first or last time?

A The first time.

Q And this one the first time too, was it?

A It may have been in that stack of books. I bought the last time; I don't know. I didn't read all the books. There were twenty-two I bought from Mr. Taylor.

Q It could have been in there?

A It could have been; I know I got it from Mrs. Taylor.

BY MR. CLARK:

I would like to introduce this as showing what he was really trying to teach there.

BY THE WITNESS:

I got it from Mrs. Taylor.

BY MR. CLARK:

Q I thought you said from Mr. Taylor?

A No; I said I didn't know whether it was in the bunch of books I got from Mr. Taylor; but I got that and the Blue Book from Mrs. Taylor. I didn't read them all, but it could have been amongst them.

BY MR. CLARK:

I want to introduce it as a possible one.

BY MR. GILLESPIE:

We object to it.

BY THE COURT:

I sustain the objection. You may have the book identified.

BY MR. CLARK:

Well, I will have it identified.

Said book was identified as Exhibit "2a", Witness Mrs. Joyner, on cross examination.

Q Did Mr. Taylor— What did he say when he first came in when you and Mrs.— who was the lady?

A Mrs. Bryant.

Q When she was over there that afternoon, did you invite her to come there?

A No; she lives across the road from me; she runs in and out all day long.

Q Did you tell her the Taylors were coming back over there that day?

A No; when we seen them stop at her home first, and I told her she needn't get mad, they would come there; Mrs. Taylor had told me they would come back.

Q She told you she would come back?

A She didn't say what day, but that she would come back.

Q Did you object to her coming back?

A No; I didn't object to her.

Q Did they both come in together?

A All three of them— all came in together.

Q The little girl, Mr. Taylor and Mrs. Taylor?

A Yes, sir.

Q Just tell the first thing they said? Did they offer you any little yellow card?

A Yes. I don't know whether it was yellow, but it was a little card.

Q Something similar to that?

A Let's see— I don't know whether that's it or not. No, this isn't it.

Q But it is shaped like that?

A It was a little leaflet, and had a little row of about four, or I would say five, numbers in here, and each one telling you how to study that literature.

Q Maybe that is what you are talking about? There are questions or references to pages?

A This isn't either.

Q But something similar to that?

A Well, something— it wasn't just like that.

Q Then, the purpose of his visit was to help you study the literature?

A I don't know; they didn't say the purpose of their visit.

Q What did they say they came around for?

A They just came in, and I told them to be seated, and Mr. Taylor had his Bible in his hand, and he began to turn through the Bible and talk.

Q What is the first thing he said?

A Well, he told about the beast with the seven heads and ten horns.

Q Who did he say that beast was with seven heads and ten horns was? Did he tell you who that was?

A I don't know whether he told me who that was.

Q Didn't he say that pictured the Roman Catholic Hierarchy?

A I don't know.

Q And did he tell you that beast pictured Hitler?

A No; he didn't say that.

Q Totalitarianism?

A No, he just told me about it. I had read it in the Bible a good many times myself.

Q He told you that was totalitarianism, didn't he?

A No; he just told me that.

Q Didn't he tell you totalitarianism would rule?

A No; he told me Hitler would rule.

Q Well, Hitler is a totalitarianism rule, isn't he?

A He just said Hitler; he didn't say totalitarianism.

Q Did he tell you Hitler would win the war?

A No; he said this would be a land where Hitler would rule.

Q He didn't say Hitler would win the war?

A No, he said he would rule.

Q Isn't it a fact he read to you: "In the days of these

last kings shall the God of Heaven set up a kingdom, and it shall break in pieces and consume all these kingdoms, and it will stand forever”?

A No; he didn't read anything.

Q Didn't he quote that to you from the Scriptures?

A He may have quoted it; he didn't read it.

Q Didn't he tell you further we prayed for “Thy kingdom come, Thy will be done on earth as it is in heaven”?

A He didn't mention prayer in no way.

Q You are sure of that?

A I am sure. He said he come to comfort me, and didn't say a word about prayer.

Q Didn't he tell you your boy would come back from the dead?

A He said he would come back and live with us forevermore.

Q Didn't he then quote “Thy kingdom come, and Thy will be done on earth as it is in heaven”?

A He did not.

Q You know that is in the Bible?

A Sure, I know that.

Q And that conformed with what he told you, didn't it?

A He didn't say it; he didn't mention prayer.

Q But he told you your boy would come back, and you would see him again?

A Yes.

Q He said he would be resurrected, didn't he?

A He said he would come back to earth, and heaven would be on earth.

Q And then he bursted out in a statement that Hitler would bring a kingdom here on earth?

A No, sir; he said Hitler would rule; he didn't have to come here to do it.

Q Didn't you tell us the other day over there that he told you Hitler would be the one that would bring the kingdom?

A No; I didn't tell you that. I said he said Hitler would rule.

Q Mrs. Joyner, didn't you invite him back?

A No. They said they wanted to come back. I didn't say a word. I let them make their plans. They said they wanted to come back—come when Mr. Joyner was at home, and asked me what time, and I told them he usually got in about nine-thirty; and they made their plans to come back about eight. I didn't ask them to come back; they made their plans to come back.

Q But you didn't ask them out?

A No; I didn't ask them out.

Q Did you ask them out when they began to tell about Hitler going to rule?

A No; I let him talk.

Q Didn't you say, "Listen! you can't talk against my Government in favor of"—

A (Interrupting) No.

Q You didn't say that?

A I wanted to see what he would tell.

Q Did somebody tell you to get all you could off of them?

A No; but I was interested enough in our Government and our Flag to want to know what he was representing.

Q Had anybody suggested to you that you— that they were spies or German agents?

A No; but I had heard what the Jehovah's witnesses were; I read about it in the papers.

Q And you figured the whole bunch were against the Government?

A That's the idea you get.

Q You got it out of the papers?

A I had read about it in the papers, and I wanted to see for myself; I didn't want to take the other fellow's word for it.

Q Did you read any of these books?

Q I read some of it; I didn't read them through.

Q Will you read a passage in each one— I believe you said you got "God and the State"; will you read some passages there you think—

A (Interrupting) Well, I don't know that I read it that close enough to tell. It says: "Non-Christians may salute the flag without reference to the foregoing rules. Those who are real conscientious Christians are in a class entirely different from others of the world. Jehovah's witnesses are Christians and in a covenant to be entirely obedient to God's law. They must teach their children and admonish them to obey God's law, as he has commanded. They are conscientious and they sincerely believe that for them to indulge in the formalism or ceremony of saluting any flag is a violation of God's specific commandment."

Q Read the next paragraph, please ma'am?

A (Reading): "Children who have been reared and taught in the nurture and admonition of God's law and who, because they are in a covenant to do God's will and conscientiously attempt to obey God, refuse to indulge in the ceremony of saluting any flag and for that reason are expelled from school and denied the right of education, what shall they do? The parents of those children, who have obeyed God's law to bring up their children in the nurture and admonition of the Lord, are punished because they do not compel their children to violate their conscience and to violate God's law, and the parents are deprived of their liberty and right to have their children educated in the schools, as the law requires. What shall they do? Many children and many parents in the United States find themselves confronted with this important question."

Q Was that the next paragraph?

A I am not a very good reader.

Q Which one did you read?

A This one.

Q You read this one first?

A Yes, sir.

Q You might read the rest of what you didn't read down there.

A (Reading): "The reason that such flag saluting is a violation of that commandment is that the salute attributes salvation to the state, which the flag represents, thus making the state a mighty one, or a 'god', whereas 'salvation belongeth alone to Jehovah, the Almighty God', and to none other. Psalm 3 chapter and 8 verse. Jehovah's witnesses conscientiously believe the Word of God and that their violation of their conscience and the violation of God's commandment would mean their certain destruction; as it is written: 'For Moses truly said unto the fathers, A prophet shall the Lord your God raise up unto you of your brethren, like unto me; him shall ye hear in all things whatsoever he shall say unto you. And it shall come to pass, that every soul, which will not hear that prophet, shall be destroyed from among the people.'" Acts 3 chapter and 22 and 23 verses.

Q You might read in connection with this on the next page.

BY THE COURT:

When you come to your time to argue you will have the entire book. Suppose your next book would be the Bible and would start in at Genesis—

BY MR. CLARK:

We ought to get enough to get the purport of it.

BY THE COURT:

The jury will have the whole book in the jury room, and I see no use in taking up the time. If you have some paragraph there we will make an exception.

BY MR. CLARK:

Q Read on page 20, the first paragraph down to the middle of the page 21, of Exhibit "2" to Mrs. Bryant.

A You read that.

(Counsel for the defendant here reads as follows):

"Most of the men who had to do with laying the

foundation of the American government believed in God and relied upon His Word; but in recent years there has been a rapid falling away from faith in God and in the Bible, particularly so amongst those who have to do with governmental or public affairs. Today many of the lawyers and judges of the courts, as well as other public officials, entirely ignore the Word of God. There are some lawyers, however, who firmly hold to the fundamental principles relied upon by the nation, and who trust in God, and who believe that every man should be free to exercise his conscientious reverence and worship of God without interference, and that the conscientious and sincere belief of all should be respected and not interfered with. More than one hundred years ago the courts of America laid down the rule that the **INDIVIDUAL ALONE IS PRIVILEGED TO DETERMINE WHAT HE SHALL AND SHALL NOT BELIEVE, AND THAT THE COURTS HAVE NO RIGHT TO INTERFERE WITH BELIEF OR PRACTICE, EXCEPT WHEN THE PRACTICE ENDANGERS THE WELFARE OF OTHERS.** In 1784 Thomas Jefferson introduced in the Virginia Legislature a bill which he had prepared, the preamble of which written by him, reads as follows: 'That to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain profession of propagation of principles on supposition of their ill-tendency, is a dangerous fallacy which at once destroys all religious liberty. it is declared that it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order.'

The Gobitis case, which originated in Pennsylvania, aptly illustrates the point with reference to forgetting or ignoring God. The Gobitis parents are conscientious

Christians, in a covenant to do the will of Almighty God. They have brought up their children as commanded by the Scriptures, 'in the nurture and admonition of the Lord.' The children also consecrated themselves to God and entered into a covenant to do his will. The school board promulgated a rule requiring a daily practice of saluting the flag, and going through a certain ceremony in connection therewith. The Gobitis children, because of their conscientious belief that such flag saluting would be a violation of their covenant and a violation of God's law, asked to be excused therefrom and to remain silent during the ceremony. For this they were expelled from school. Suit was begun in the United States District Court, presided over by Judge Maris. That Court held that the flag-salute rule could not be enforced against the Gobitis children because of their conscientious belief in God and his Word, and in his opinion, amongst other things, he said: 'In these days, when religious intolerance is again rearing its ugly head in other parts of the world, it is of the utmost importance that the liberties guaranteed to our citizens by the fundamental law be preserved from all encroachments.'"

Q Did Mr. Taylor tell you that the Christians would go to heaven, but that the earth would be made perfect also?

A He told me there were two divisions of people, one were the sheep and one the goats, and all people who studied this literature would be in the sheep class.

Q And the folks that didn't study it—

A (Interrupting) He didn't say, but I guess they would be goats; but he said I would have to study and learn this literature and I would be a sheep.

Q Did he tell you at that time you were a goat?

A No; but he said if I didn't study and learn this literature— I would have to study it to be a sheep.

Q Did he tell you Christians would go to heaven?

A He said heaven would be here on earth. He didn't say—he said we would stay here on earth.'

Q Didn't he tell you 144,000 Christians would go to heaven? A No.

Q And be associated with Christ Jesus as the elect?

A No; he didn't say that.

Q Didn't he tell you other people would live upon the earth, except these 144,000?

BY MR. POWELL:

We are bearing with our friend here, but I don't think he ought to ask every question in the dictionary.

BY MR. CLARK:

It shows what the man was doing there.

BY THE COURT:

He can testify to that, or other witnesses. It wouldn't matter what he was doing, I don't believe, if he was preaching this doctrine.

BY MR. CLARK:

Q What did you understand what the purpose of Mr. Taylor's visit?

A Well, he wanted me to learn that literature; wanted me to buy it first, and study it, and learn to worship according to the literature.

Q Did he say the literature or the Bible?

A He said literature; and he said to study it more than once.

Q Did he say to study it with reference to the Bible?

A No; he didn't say anything about the Bible.

Q Didn't mention the Bible?

A No.

Q Did he say a word about Hitler?

A He said Hitler would rule.

BY THE COURT:

We have been over that three or four times.

BY MR. CLARK:

Q What else did he say in connection with that?

A That was all. That was enough.

BY MR. CLARK:

That's all.

(WITNESS EXCUSED)

MRS. W. B. DENSON was thereupon called as a witness on behalf of the Defendant [correctly, the State], having been first duly sworn, and testified as follows:

DIRECT EXAMINATION

BY MR. POWELL:

Q Is this Mrs. W. B. Denson?

A Yes, sir.

Q Now, look at the jury, and talk so they can hear you, and tell the jury where you live?

A I live out a mile east, on the Country Club Road.

Q East of Canton?

A Yes, sir.

Q Mrs. Denson, did you ever see Mr. Taylor here?

Q Tell, when was the first time you ever saw him, and what conversation took place?

A He came to my home, I think, about the first of June or latter part of May, and wanted to talk with me about some literature.

Q Start again, now.

A He came to my home, and I met his wife out in the yard, and she wanted to know if they could talk with me, they wanted to bring me comfort.

Q Why did they want to bring you comfort? Did they say?

A Well, I lost a son at Pearl Harbor, and they wanted to talk with me about that.

Q Did they talk in that tone and about that speed?

A So, they said this country was clamoring for dictatorship, and it was wrong for the President to put uniforms on our boys and send them to fight the enemies; and they

said the sooner we quit bowing down to the Flag—to the Government and her Flag, that much sooner would we have peace; that we couldn't have peace as long as we believed in saluting the flag. And he said that Hitler would rule; he said that he wouldn't come here, he wouldn't have to, but he would rule; and he said there were just as many sheep—he divided the people as sheep and goats, the Jehovah's witnesses were the sheep and the believers; and he said there were just as many sheep in Germany as there were here. And just at that time, Mrs. Taylor spoke up and says, "You know you would hate to see a German mother lose her son as much as you would anyone else." But he told me to study the literature, and that I would get comfort from it.

Q Well, did they have any literature there?

A Yes, sir; they did. And I bought some of it.

Q How much did you pay for it?

A I don't remember whether it was 53 or 58 cents; but Mr. Taylor made a price to this literature, and his wife corrected it; she made another price, and asked me if I had some chickens and eggs that I would give her for that literature; but I didn't—I paid her money.

Q Do you know how many books you bought?

A I don't remember; but it was a stack—little books and a Blue Book. And Mrs. Taylor gave me instructions how to find things through those books.

Q How many times did they come to your house?

A Only one time.

Q Do you recollect whether these books "Refugees" and "Loyalty"—were those two of the books?

A Yes, sir.

BY MR. POWELL:

I want to introduce the whole book in toto.

BY MR. CLARK:

I make the same objection.

BY THE COURT:

I overrule the objection.

Said books were identified as Exhibits "1" and "2", Witness Mrs. Denson, and are in words and figures as follows:

BY MR. POWELL:

Q Mrs. Denson, please tell the jury whether or not in the book called "Refugees" there are these words on page 6 and part of page 7— did this Book "Refugees" have this in it:

"All nations of the earth today are under the influence and control of the demons. . . .

"All the nations suffer the same fate or come to the same end, because all nations of earth are on the wrong side, that is, on the losing side. All nations are against the Theocratic Government, that is, the government or kingdom of the Almighty God. . . .

". . . all are under the control of the invisible host of demons."

A Yes, and that was in his teachings, too.

Q I will ask you now please to look on page 8 of the book called "Loyalty", the front page thereof, the words "Whose servant?" "Saluting the Flag"—"Last days"— and see if these words are on page 8 of that book:

"But to compel people to salute a flag or any other image is wrong, and particularly if that person believes on God and Christ Jesus. For the Christian to salute a flag is in direct violation of God's specific commandment."

Is that on that page?

A Yes, sir.

Q You have testified here to this jury that they came there to console you; tell the jury what, if anything, Mr. Taylor had to say in regard to your boy, whether he was right or wrong?

A He said my boy was wrong, but no doubt he thought he was right, being where he was fighting the enemy, but it was wrong; that the President was wrong in putting a

uniform on him and putting him in that fight down there; but he said if I would have the faith and study and believe, my boy would come back and I would have the opportunity of teaching him again, just as I would have to follow his instructions and all these things to do right.

BY MR. POWELL:

That's all.

CROSS EXAMINATION

BY MR. CLARK:

Q Mrs. Denson, this is page 17 and 16, where you were reading from?

BY MR. POWELL:

I was reading on page 6 and 8 of the other two books.

BY MR. CLARK:

Q Did you have this book?

A No; I have some like it.

Q In regard to the flag saluting—will you read two paragraphs on page—I will read it.

A Would you read it.

Q I will read it, and you can identify it as being in that book—it is page 17, paragraphs 1 and 2, of the book entitled, "God and the State", exhibit "2" to Mrs. Bryant's testimony. It reads:

"In the time of the apostles there were religionists in the same category as above mentioned, and concerning which the apostles wrote: 'For I bear them record that they have a zeal of God, but not according to knowledge. For they being ignorant of God's righteousness, and going about to establish their own righteousness, have not submitted themselves unto the righteousness of God. For Christ is the end of the law for righteousness to every one that believeth.'—Romans 10:2-4.

"The wrong is not in the flag, because the flag of the United States is the symbol of liberty and justice. The wrong is not in the salute, but, as to a conscientious

Christian, the wrong lies in compelling or attempting to compel that one, against his conscience, to violate God's specific commandment. As above stated, God has specifically emphasized his law, that no form of worship or reverence shall be given to any creature or thing, and to attempt to compel a person to violate his conscience and to violate God's commandment is absolutely wrong."

BY THE COURT:

Now, go ahead with the examination of the witness.

BY MR. CLARK:

Q Now, that book stated to you that you had that it was not wrong to salute the flag, didn't it?

A It was in there.

BY MR. POWELL:

The book speaks for itself.

BY THE COURT:

She says if it was in there.

BY MR. CLARK:

It was in there.

BY THE WITNESS: I didn't keep up with you. I don't see that here.

BY MR. GILLESPIE:

It is in evidence, and it speaks for itself.

BY THE COURT:

If she says it is not in there, it is still in there, if it; if she says it is in there and it is not, it is not. I sustain the objection; and let's go on then with the case; you can have your argument with the jury and not with this witness.

BY MR. CLARK:

Q You stated that Mr. Taylor said it was wrong to salute the Flag?

A Yes, sir; he did.

Q Then, he taught contrary to what was read to you out of the book?

BY MR. GILLESPIE:

We object to that; the book speaks for itself.

BY THE COURT:

I sustain the objection.

BY MR. CLARK:

Q When he came into your home, how did he approach your home— how did he come into the house?

A Well, his wife asked if he could come in—if they could come in and talk with me, and she told him to come on in.

Q Did they play any record?

A No; they didn't play any record in my home.

Q Did they present to you a card of introduction?

A No; they had this literature to sell.

Q And did you invite them back? Did they ever come back to your home?

A No; they never did come back.

Q Were you there the day they were at Mrs. Joyner's, that day?

A No, sir; I was not.

Q Well, did he say anything— who was there and heard him talking about Hitler going to rule at your home?

A I was there, his wife, and little girl were there.

Q And how did he say that?

A He said that Hitler— wait, let me see— he said Hitler wouldn't come here, he wouldn't have to, but he would rule.

Q Did he mention the beast with seven heads and ten horns?

A Yes; he did; and I don't know— he stayed there about an hour and a half, and he talked continually.

Q Did he refer you to the Scriptures?

A I don't know whether he did or not. He turned through the Bible so much, it didn't sound like Scripture to me.

Q What he read, you didn't know whether it was Bible or not, or what he said?

A I don't think there was much Bible to it.

Q Did you tell anybody then about his stating Hitler

was going to rule?

BY MR. POWELL:

We object to what she told.

BY THE COURT:

What she told that did happen couldn't throw any light on it.

BY MR. CLARK:

Q Did you talk to anybody?

A I talked to Mr. Gillespie, and Mr. Cauthen, and Mr. Powell there today.

Q This is the first time you talked to them?

A No; I talked to some of them before.

Q Did you talk to Mr. O'Neal?

A Well, I consider I have talked to these three; I have given you their names.

Q Did you talk to Mr. O'Neal?

BY MR. GILLESPIE:

If you have, tell him.

A Yes; I talked to Mr. O'Neal.

BY MR. CLARK:

Q He asked you about it, did he?

A Well, we have talked about it some.

Q Did you protest against Mr. Taylor when he began talking about Hitler—in favor of Hitler?

A I just sat and listened to him.

Q You didn't protest at all?

A No; I sat and listened at him.

Q You didn't argue with him about it?

A No, sir; I didn't; there wasn't any argument taken place.

Q Did Mr. Taylor tell you that the President was wrong when he put the boys in the fight?

A Yes, sir; he told me he was wrong to put the uniform on our boys and send them to fight the enemies.

Q Did he explain why he was wrong?

A He said we would never get anywhere as long as we

saluted the Flag; he said we looked upon our Government and the Flag as something sacred.

Q Did he tell you it was wrong to look upon it as something sacred?

A He said it was wrong to salute the Flag.

Q Did Mrs. Taylor say anything about the flag salute—did she mention the flag salute?

A No; Mrs. Taylor talked some, but I am not going to say whether she said that or not; but she showed me how to find headings and helps in that book, and she did tell me it would hurt me as much to be a German mother and lose her son as anybody; and she certainly did tell me to study that literature and go by it.

Q Well, anything else she said—just her exact words—in other words, did she criticise the Government in any particular?

BY MR. GILLESPIE:

This is Mrs. Taylor, and she is not on trial.

BY MR. CLARK:

I wanted to see if we could refresh her memory.

BY THE COURT:

Ask her if she remembers anything else.

BY MR. CLARK:

Q Do you remember anything else Mrs. Taylor said?

A I don't know.

Q You don't know? Do you remember anything else Mr. Taylor said?

A Well, I don't know that I do right now.

Q Did anything he said to you, or did, either, cause you to have less respect for the flag?

BY MR. GILLESPIE:

We object to that.

BY THE COURT:

I beg your pardon. What was the question?

BY MR. CLARK:

I asked her this question: Did anything he said or did,

his teaching there, cause her to disrespect the flag or disrespect the Government.

BY MR. GILLESPIE:

It is not a question of what she thought— well, I will withdraw the objection.

BY THE COURT:

Anything that Taylor did to cause you to disrespect the flag, or have disrespect for the Government— I will overrule that objection.

BY MR. CLARK:

Q Did that cause you to have any disrespect for our Government or our Flag?

A No, sir; it caused me to have more respect for our Government, and less for him.

Q In other words, then, his work didn't do any harm there at your place? Is that right?

A No, sir; it did not do any harm to my home.

BY MR. CLARK:

That's all.

(WITNESS EXCUSED)

BY MR. GILLESPIE:

Formerly we introduced just passages from the two books entitled "End of Axis Powers", and "God and the State". We would like to offer those books in full.

BY THE COURT:

All right.

Said books were identified as Exhibits "1" and "2", respectively, Witness Mrs. Denson, and are made a part hereof.

BY MR. GILLESPIE:

We rest, your Honor.

Thereupon, the jury retired by order of the Court and in the absence and out of the hearing of the jury, the following proceedings were had and entered of record:

BY MR. CLARK:

Now comes the above named defendant in the above entitled cause, and files this his motion for a peremptory instruction at the close of the State's evidence and before the defendant offers any evidence, and as grounds for this motion says:

1

ONE

The statute under which the indictment is drawn, known as House Bill 689 of the regular Legislative Session of 1942, is void on its face and unconstitutional because section 1 thereof deprives the citizens and residents of Mississippi, and particularly this defendant, of his rights of freedom to worship Almighty God according to the dictates of his conscience, freedom of press and freedom of speech, contrary to sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi, the First Amendment to the United States Constitution, and section 1 of the Fourteenth Amendment to the United States Constitution.

TWO

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session of 1942, is unconstitutional as construed and applied to the activity of the defendant because section 1 thereof deprives this defendant of his inherent rights of freedom of worship of Almighty God according to the dictates of his conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi and the First Amendment and Section 1 of the Fourteenth Amendment to the United States Constitution.

THREE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is

unconstitutional because section 1 thereof is unreasonable and in excess of the police powers of the State of Mississippi, thereby permitting the denial of liberty without due process of law, contrary to Section 14 of Article 3 of the Mississippi Constitution and section 1 of the Fourteenth Amendment to the United States Constitution.

FOUR

The statute under which the indictment is drawn, known as House Bill 689, of the Regular Legislative Session 1942, is unconstitutional because section 1 thereof is vague, too general, indefinite and permits speculation on the part of the jury and court trying the cause, thus constituting a dragnet, both on its face and as construed and applied, all contrary to section 14 of Article 3 of the Mississippi Constitution and section 1 of the Fourteenth Amendment to the United States Constitution.

FIVE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because section 2 thereof is unreasonable and in excess of the police power of the state, and is vague, indefinite and a dragnet, in violation of section 1 of the Fourteenth Amendment to the United States Constitution.

SIX

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because the entire statute denies equal protection of the laws and discriminates between classes contrary to section 1 of the Fourteenth Amendment to the United States Constitution.

SEVEN

The State has wholly failed to offer any evidence what-

soever as to the defendant's guilt, and the undisputable evidence shows that the defendant is not guilty of violating any law of the State of Mississippi, and is not guilty of the act charged in the indictment.

WHEREFORE the defendant prays that the Court sustain this motion for peremptory instruction, exclude all of the evidence offered by the State and instruct the jury to acquit the defendant and by their verdict say "We the jury find the defendant not guilty", and render a judgment dismissing the indictment and discharging the defendant with his costs, and defendant prays for such other and further relief as he may show himself justly entitled to.

BY THE COURT:

Let the motion be overruled.

MRS. G. C. CLARK was thereupon called as a witness on behalf of the Defendant, having been first duly sworn, and testified as follows:

DIRECT EXAMINATION

BY MR. CLARK:

Q Mrs. Clark, were you here at the preliminary trial?

A Yes.

Q In that hearing—that hearing was a sort of informal hearing—nobody was under the rule, and you heard the three women testify over there?

A Yes; the table was there, and I was sitting at that desk in the corner by the window.

Q Tell the jury there if there was anything mentioned about the Flag that day?

BY MR. GILLESPIE:

We object.

BY THE COURT:

The objection is sustained.

BY MR. CLARK:

Q Tell what they testified?

BY MR. GILLESPIE:

We object.

BY THE COURT:

Objection sustained.

BY MR. CLARK:

Q What did Mrs. Denson testify?

BY MR. GILLESPIE:

We object.

BY THE COURT:

Objection sustained.

BY MR. CLARK:

Q Well, did Mrs. Denson say these words:—

BY MR. GILLESPIE:

We object.

BY THE COURT:

Don't answer. Let him ask his question first.

BY MR. CLARK:

It is possible I haven't formed my question right. I wanted to bring out by her what was brought out in that hearing.

BY THE COURT:

I suspect I was sustaining these objections on other grounds of competency of this witness at this time to testify to this.

BY MR. CLARK:

You don't think she is justified at this time to impeach those—

BY THE COURT:

No; I don't think at this time she or anybody else is competent to impeach them on anything that was said or done at that trial.

BY MR. CLARK:

I am going to ask that Mrs. Clark read to the jury from the 1st up to the 15th page—

BY MR. GILLESPIE:

Is that a book in evidence already?

BY MR. CLARK:

Yes, sir.

BY MR. GILLESPIE:

We object to that.

BY THE COURT:

I sustain the objection.

BY MR. CLARK:

To read these books— it is true they are in evidence, but it will take my whole time to do that.

BY THE COURT:

I will grant you additional time. The jury would have unlimited time; they have got from now on until they quit; and you can read it when it comes time to make your presentation.

BY MR. CLARK:

Q All right. Mrs. Clark, I will ask you this: You have read these books in evidence— you have seen them there?

A Yes.

Q Is there anything in there that tends to—

BY MR. GILLESPIE:

We object to that.

BY THE COURT:

Don't answer; but let him finish the question.

BY MR. CLARK:

Q Mrs. Clark, you have had— you are a preacher, are you?

A A sort of one.

Q Well, you have had— you have studied the Bible?

A Quite a bit.

Q And you have been—

BY MR. GILLESPIE:

We object to all of this.

BY THE COURT:

He may be qualifying the witness.

BY MR. CLARK:

Q And you have read— you are well versed in what those

books contain?—What they teach?

A These particular books?

BY MR. GILLESPIE:

Say if you are or not.

A You are talking about them you have introduced?

BY MR. CLARK:

Q Yes.

A Yes, sir.

Q Is there anything in there that teaches disloyalty to the government?

BY MR. GILLESPIE:

We object to that.

BY THE COURT:

The jury will have to pass on that. As to a question of law I am the judge; but as to a question of fact the jury is the judge of that.

BY MR. CLARK:

I want to qualify her as a minister of the Gospel.

BY THE COURT:

You can qualify her as to being a minister of the Gospel.

BY MR. CLARK:

We are trying the question of disloyalty here.

BY THE COURT:

That's the question, but that is for the jury.

BY MR. CLARK:

Mrs. Clark, go back to the witness room.

(WITNESS EXCUSED)

BY MR. CLARK:

I want to recall Mrs. Joyner.

BY MR. GILLESPIE:

Now, the State has closed—I don't know what he is recalling Mrs. Joyner for. I don't think he has any right to further cross examine Mrs. Joyner.

BY MR. CLARK:

I want to ask her if she didn't testify to a certain thing.

BY MR. GILLESPIE:

We object to it as being to late to lay a predicate.

BY THE COURT:

It may be a little out of time, but that's all right.

MRS. T. K. JOYNER was thereupon recalled for further cross examination, having been previously duly sworn, and testified as follows:

RE-CROSS EXAMINATION

BY MR. CLARK:

Q You were at the preliminary, were you not, Mrs. Joyner?

A Yes, sir.

Q Did you three women testify to these words—

BY MR. GILLESPIE:

We object to that.

BY MR. CLARK:

They were all in there together.

Q Did you testify to these words: That Mr. Taylor said Hitler would win the war and bring the kingdom?

A I said "Hitler would rule".

Q Didn't you say that at that trial, that Hitler would win the war and bring the kingdom?

A I couldn't have said that because he said Hitler would rule.

Q Did you say this: That our boys would come back from death and live with us?

A No; he didn't say from death; he said they would come back home and live with us forever, for heaven would be here on earth.

Q That's the words, then?

A That's not the way I said it.

Q Was it like he said it?

A I say he said "Hitler would rule; he wouldn't come over here; he wouldn't have to." Those are the exact words.

Q And you didn't say anything about the Flag that day?

A They didn't ask me. You remember they asked us very little that day.

BY MR. CLARK:

That's all.

(WITNESS EXCUSED)

MRS. W. H. BRYANT was thereupon recalled for further cross examination, having been previously duly sworn, and testified as follows:

RE-CROSS EXAMINATION

BY MR. CLARK:

Q Mrs. Bryant, did you testify in the preliminary hearing when we had it in that corner the other day?

A Yes, sir.

Q And didn't you testify to these words: "Hitler would win the war and bring the kingdom"— that Taylor said that?

A No, sir; I said that he said Hitler would rule, and wouldn't have to come here to do so.

Q And didn't you say that our boys would come back from death and live with us?

A He said they would come back here on earth and live like they did before they were killed.

Q And did you say anything— did you testify— You didn't mention the Flag, did you, that day?

A Yes, sir; we talked about the flag.

Q And what did you testify that day about the flag?

A The same thing I did today.

BY MR. CLARK:

That's all.

(WITNESS EXCUSED)

MRS. W. B. DENSON was theupon recalled for further cross examination, having been previously duly sworn, and testified as follows :

RE-CROSS EXAMINATION

BY MR. CLARK :

Q Mrs. Denson, you testified over here the day we had the preliminary trial or hearing in the case of Mr. and Mrs. Taylor ?

A Yes, sir.

Q And you there didn't testify to anything Mrs. Taylor said about the flag, did you ?

A There wasn't any questions asked us that day about that.

Q There was nothing asked any of you that day about the flag ?

A No, sir.

Q Didn't I ask you that— anything else he said ?

A You didn't ask me anything about what Mrs. Taylor said.

Q Well, about Mr. Taylor, then ? What did you testify in regard to the flag that day ?

A Well, he said we were wrong—we bowed ourselves down to the flag.

Q He said— in other words, he testified the same— you testified the same thing that day that you testified today ?

A I just answered the questions you asked me ; you didn't talk as much about it as you did today.

Q But you would say that's what you said— you are sure of that ?

A I am sure he said exactly what I said he did.

Q I am talking about over there in that testimony—what did you say he testified—that he told you that day—what did you testify that he told you that day ? Didn't you say this : That Mr. Taylor said that Hitler would win the war and bring the kingdom ?

A No; I did not say that. I said that he said "Hitler would rule; he wouldn't come here; he wouldn't have to, but he would rule."

Q And then didn't you also say that he said that our boys would come back from death and live with us?

A He said if we had the faith—if we studied and had the faith we should, and went on with this literature, that they would come back and we would have a chance to teach them.

BY MR. CLARK:

That's all.

(WITNESS EXCUSED)

BY MR. CLARK:

I want to recall Mrs. Clark.

MRS. G. C. CLARK was thereupon recalled as a witness on behalf of the defendant, having been previously duly sworn, and testified as follows:

DIRECT EXAMINATION

BY MR. CLARK:

Q Mrs. Clark, were you at the preliminary hearing over there?

A Yes, sir.

Q Did Mrs.— tell what Mrs. Bryant testified to that day— well, they all three testified—

BY MR. GILLESPIE:

We object to that.

BY THE COURT:

You will be confined to those things about which you laid the predicate.

BY MR. CLARK:

Q Did Mrs. Bryant, and Mrs. Denson and Mrs. Joyner testify about the same thing? Did their testimony agree over there?

A Yes, sir.

BY MR. POWELL:

Did their testimony agree with what they did the other day?

A Well, I didn't hear today's testimony.

BY THE COURT:

I think it is objectionable—go ahead; she has answered.

A (Continuing) At the preliminary, they all testified to the same thing.

BY MR. POWELL:

Wait a minute! We object to that; she didn't hear it today.

BY MR. CLARK:

I asked her did they agree that day in their testimony, or did their testimony agree that day.

BY THE COURT:

She answered and said they did.

BY MR. CLARK:

Q Now, did they testify Hitler would win the war and bring the kingdom?

A Yes, sir.

Q And that our boys would come back from death and live with us?

A Yes, sir.

Q Did they mention the flag that day?

A Absolutely not; the flag was not mentioned by either side that day.

BY MR. CLARK:

That's all.

CROSS EXAMINATION

BY MR. GILLESPIE:

Q You remember exactly, the identical language they used, do you, Mrs. Clark?

A Practically so.

Q And you say the words spoken to you by Mr. Clark, your husband, are the identical words they used at the preliminary trial?

A That's what they said he said, "Hitler would win the war, and he would bring these good times"; and they also said that he said their sons would be given back to them to live with them on the earth.

Q Said if they believed in these teachings?

A No; they didn't say that.

Q But they said that Taylor did say their sons would be brought back to them and live with them again and teach them?

A That they would be resurrected.

Q You didn't say anything about resurrection a moment ago?

A That was the word, "resurrection".

Q Will you please, ma'am, repeat exactly what they did say?

A I can't repeat the identical words, but I can the substance of it. I know they was positive about "Hitler would win the war."

Q Isn't it a fact they said Hitler would rule?

A No, he said Hitler would win the war.

Q Would win the war?

A Would win the war.

Q You are a Jehovah's witness yourself, are you not?

A No, sir.

Q You are not? You were asked are you a minister?

A Well, anybody that talks the Bible is a minister, don't you think so, of the Lord?

Q Are you an ordained minister, or do you mean you just teach?

A Yes, sir; I am a teacher by profession; have taught for nineteen years.

Q Do you teach this same literature?

A No, sir; I don't teach that literature.

Q And you are not a member—not a Jehovah witness?

A Not a member of any organization, except the Mississippi Educational; but I am by profession a teacher.

BY MR. GILLESPIE:

That's all.

(WITNESS EXCUSED)

R. E. TAYLOR was thereupon called as a witness in his own behalf, having been first duly sworn, and testified as follows:

DIRECT EXAMINATION

BY MR. CLARK:

Q Your name is what?

A Ralph E. Taylor.

Q Where do you live at present?

A 318 East Academy Street.

Q In Canton?

A In Canton.

Q Speak out as loud as you can. Mr. Taylor, what did you— how long have you— what were your purposes in coming to this County, and when did you come?

A I came to town about three months ago to preach the gospel of the kingdom.

Q Speak loud enough so the jury and audience have your testimony, that they might hear. What do you mean by the gospel of the kingdom?

A The one that we have all been praying for in Matthew 6:10, "Thy Kingdom come, Thy will be done on earth as in Heaven."

Q Then, are you a minister of the gospel?

A Yes.

Q Have you an identification to that effect?

(Witness here hands counsel card)

BY MR. GILLESPIE:

May I see that, please.

(Counsel for the defendant hands card to District Attorney).

BY MR. CLARK:

I want to offer this in evidence, and ask that it be

marked as Exhibit "1" to the defendant's testimony.

Said document was identified by the Reporter as Exhibit "1", Witness Taylor, and is in words and figures, as follows:

Q When you went to either one of these ladies' houses, did you offer them that to read?

A No.

Q What is that card you hold in your hand?

A That's a card that shows I am an ordained minister.

Q What kind of ordination do you have?

A We have an earthly ordination of our organization as well as a scriptural ordination.

Q What is the scriptural ordination?

A Isaiah 61: 1, 2.

Q Quote it.

A Isaiah 61, 1 and 2: "The spirit of the Lord God is upon me; because the Lord hath anointed me to preach good tidings unto the meek; he hath sent me to bind up the broken-hearted, to proclaim liberty to the captives, and the opening of the prison unto them that are bound:

To proclaim the acceptable year of the Lord, and the day of vengeance of our God; to comfort all that mourn."

Q Any other scripture ordination?

A Isaiah 43, 9-12.

Q And any other?

A Matthew 24, 14 says: "And this gospel of the kingdom shall be preached in all the world for a witness unto all nations; and then shall the end come."

Q And any more?

A There are some more scriptures that show how we work—Acts 20: 20, as well as Acts 5: 42, and Acts 3: 23, says if we do not preach the gospel we will be cut off from amongst the people. That is where Paul says "Woe is me, if I do not preach the gospel."

BY MR. GILLESPIE:

I object to those scriptures.

BY THE COURT:

I sustain the objection.

BY MR. CLARK:

Q Read the front of that card.

BY MR. GILLESPIE:

I object to that.

BY THE COURT:

The card has been introduced in evidence. Let's go ahead with the examination; you can read that to the jury.

BY MR. CLARK:

Q All right; read the first—

BY MR. POWELL:

We object to the reading of it.

BY THE COURT:

I think he can show that is directed to him, and who it is issued by.

BY MR. CLARK:

Q Who signed that for you?

A This is signed by the President of the Watch Tower Bible and Tract Society.

Q Well, who—that's the earthly ordination, is it?

A That's right.

Q And what about—and you just mentioned your authority from God?

A That's right.

Q So, has the Government of the United States recognized you as an ordained minister?

A That's right.

Q How are you recognized in that?

A I am recognized as such by the Selective Service Board, is one thing.

Q What class did they place you in?

A 4-D.

Q How long have you been preaching, Mr. Taylor?

A Twenty years.

Q Have you served in the army since then?

A Yes.

Q How many years did you serve in the army?

A I was in a little less than two.

Q Now Mr. Taylor, you heard the evidence as given by the ladies here, Mrs. Joyner. I believe it was at Mrs. Joyner's house; will you tell as near as you can tell the words you said there at Mrs. Joyner's, your purpose there, that the jury might know what you were doing there—your purpose and intent?

A That would be quite easy, for we have been doing that full time for eleven years. I approached the house at Mrs. Joyner's on invitation of my wife; she called first, and she says, I would like for you to go in and meet her and talk to her; you are a man; they will listen to you better than a woman, and you can tell them more than I can about it. So, I went in and took up kinder where my wife had been talking to her before, concerning the kingdom, and that's all we ever talked about. Incidentally, I explained to her that there was the three worlds mentioned in the last chapter of Peter—Second Peter, the one before the floor [flood] the present world, and the world to come; and that the Scripture indicated we are about to the time for the change over from the present world for the world we have been praying for, "Thy kingdom come". And she spoke to Mrs. Taylor the first visit concerning what was uppermost in her mind, the loss of her boy. Well, we use the scripture for comfort for a time like that. So, I explained more about the two powers, the heavenly and the earthly. I says, "I am not your boy's judge, or you either; but the scriptures point out there is a little flock, 144,000 that will be in heaven, the earth will be made a paradise, and how the conditions of the Garden of Eden would be restored, and if Adam hadn't disobeyed the Lord they would be living here today. So, as they said, I spent about an hour and a half at one place; and I can remember is that; but those were what we spoke on, as we do in the ordained [ordinary] work, talking about the

kingdom; and talked for a long time.

Q You heard the testimony that you said Hitler would win the war, and that he would rule, or maybe would win the war, or rule maybe over here, and that President Roosevelt was wrong in putting the uniform on the boys. Did you say anything even akin to that?

A Well, if I did I wasn't preaching what I practiced, because I put on the uniform.

BY MR. POWELL:

We object to the lecture.

BY MR. CLARK:

Q Well, did you say that?

A No.

Q Did you say it was wrong to salute the flag?

A Since there were three together, I don't want to take up the time, but I would like to state that at the three ladies' houses I visited, that I didn't mention the flag at all.

Q You never discussed the flag at all?

A The flag wasn't mentioned at either place at all.

Q Well, did you mention Hitler at either place?

A Yes.

Q Tell what you said about Hitler?

A You can't preach the gospel, these things, and not mention Hitler, because he represents the totalitarian rule spoken of in the 17th chapter of Revelation.

BY MR. GILLESPIE:

We object to that.

BY THE COURT:

The objection is sustained.

BY MR. CLARK:

Q Did you tell Mrs. Joyner—she said you told her there was a beast—you discussed the matter of a beast with seven heads and ten horns. Did you do that?

A Yes.

Q Tell what you said about the beast?

A I spoke of the beast in Revelation 17, you have read,

having seven heads and ten horns, and a man riding on top. I didn't go into detail, but I did say this: That this picture is a symbolic picture representing totalitarianism threatening all the world today.

Q I believe both of the witnesses testified you discussed that beast; that's among the things you discussed, that beast with seven heads and ten horns?

A That's right.

Q Did you tell her that Hitler would rule, or win the war, either?

A On the contrary, I told her he would not win the war.

Q How did you show her?

A I showed her, Daniel 11th Chapter speaks there of totalitarianism coming to his end—"in his end, no nation will help him". I made it clear that Hitler would not win this war.

Q Is that discussed—this is an exhibit here—and is that discussed here of Hitler's coming to his end, and none would help him?

A Yes.

Q Do you remember the page that is discussed on?

A Yes.

Q It is the "End of the Axis Powers and Comfort All that Mourn", Exhibit "1" to Mrs. Joyner's testimony, and what page?

A Page 16, first paragraph.

Q Read that to the jury?

A (Reading) "The prophecy of Daniel, at the eleventh chapter, proceeds to detail the struggle between "the king of the north" and "the king of the south", and definitely tells of the end of the totalitarian rule and that the Axis combine, the dictatorial rule, shall soon cease forever. On this occasion it is not possible to relate the details of that prophecy, but, by the Lord's grace, the Watchtower will publish the same that the people of good-will may be enlightened and strengthened in hope for complete relief."

And also on page 17, the same thing, stated in different words.

Q Read that on page 17.

A (Reading) "What, then, shall be the end of this great distress and mourning? Shall the totalitarian dictators succeed in controlling the earth? God's prophecy answers that to the full satisfaction of all who love righteousness. The prophecy tells that 'the king of the north' receives information which proceeds from Jehovah God and Christ Jesus and which greatly troubles the world powers, and 'therefore he shall go forth with fury to destroy, and utterly to make away many. . . . Yet he shall come to his end, and none shall help him.' (Daniel 11 : 44, 45) That will mark the end of the rule of wickedness and will mean the end of mourning for the people."

Q Have you in that same book there— have you any other point— any other page there that further shows the end of the totalitarianism?

A Yes, sir; here it is—beginning on page 22, under the subheading "Theocracy".

BY THE COURT:

Is this part of the conversation this witness had with Mrs. Joyner and Mrs. Denson?

BY MR. GILLESPIE:

I will have to object now, because they are going too far with it.

BY THE COURT:

Q Are you testifying there was any conversation about this? If there was any conversation about this, we should overrule the objection.

BY MR. CLARK:

Q Are you testifying you gave these things you are now reading from?

A Yes, sir.

Q Go ahead and read them.

BY MR. GILLESPIE:

Q Did you say that or read that to her?

A This is one of the main things I talked about.

Q Did you talk about it or read it?

A Well, if it had been there and taken down what I said, it would have been from memory.

BY MR. GILLESPIE:

If he talked, let him say what he said.

BY THE COURT:

Q What did you do, did you read that, or talk to her and tell her in your own words what you said?

A Well, it is both the same thing, what I said and what is in the booklet.

BY MR. GILLESPIE:

I suggest he be allowed to say it then instead of reading it.

A I will continue, then, where I left off.

BY THE COURT:

Say anything you said or did, but don't speculate about what might have been said or done.

A Shall I talk about Mrs. Denson, or any one of the three, or all of them?

BY MR. CLARK:

Q Tell them what you told all of them? It was all at the same house; it all grew out of the visit you made at Mrs. Joyner's and Mrs. Denson's?

A One point stands out very clearly in my mind: Mrs. Denson said "I pray every night for every mother that has lost a son". That's where the praying for German mothers came in; that was Mrs. Denson's idea and not my wife's. And I haven't been putting my whole sole in this thing for eleven years, every day, only because I do it for the love of it. I remember very clearly what I said, because I have said it so much, and I don't have any trouble recalling it; and I went on to say to her from the Lord's viewpoint there is no Baptist, Presbyterian and Catholic; the Bible teaches

one Lord, one faith and one baptism. I says, "the Lord didn't recognize boundaries in establishing his kingdom, or the devil didn't either in establishing his;" and I says, "He is out today to use Hitler to bring on a great period of destruction and establish thereon his new order." I said, "The devil is a great mimic, and he loves to counterfeit what the Lord does, and do it first, or ahead of time; and so, the devil can read the Bible, and he knows the Kingdom is coming, and the Scriptures foretell clearly what will be the result." If you would like to hear it—it seems to be getting late—

BY MR. GILLESPIE:

Not a sermon.

A (Continuing) I have heard that before. I can't do without doing what you call "preaching". That's all I do.

BY MR. CLARK:

Q You can preach?

BY MR. GILLESPIE:

We object to the preaching.

BY THE COURT:

You go ahead and give us the essence of it. I would hope you would limit it to saying you did or didn't say these things you have been accused of saying, and I expect indirectly the evidence is trying to do that.

A (Continuing) I would like to say on that point, the best way to tell what I did say is to tell what I didn't say; and I would like to say before the Lord, before this jury and before you people out there, that "I didn't say one word of the charges made in that accusation." When you get down to the quotations from the booklets, I did. But, as far as those charges, I know what it is to suffer for Jesus' sake; because I never heard a person say—I don't believe there is a person out there can look me in the face and tell me I am for Hitler.

BY MR. POWELL:

We object to that.

BY MR. CLARK:

Q Are you, or did you tell her you were, for Hitler?

A No.

Q Did you tell her Hitler was going to win?

A No.

Q Did you tell her Roosevelt was doing wrong in putting the uniform on the men?

A I will answer that by saying that has not taken place at any time; that has not happened yet, to send them off to foreign countries to be shot down.

Q Did you tell her it was wrong to salute the Flag?

A No.

Q Does that literature teach it is wrong to salute the Flag? A No.

Q Do you teach it is wrong to salute the Flag? A No.

Q Do you think it will hurt this man here to salute the Flag? A No.

Q Have you ever taught anybody it is wrong to salute the Flag? A No.

Q Mr. Taylor, have you ever—did you there, or at any other time, teach disloyalty to the Government of the United States? A No.

Q Are you loyal to this country? A Yes.

Q Do you love this country? A I do.

Q Do you love the Flag that floats over this country?

A I love it so much I will die for what it stands for.

Q Well, did you try at that time to win away these women from and interfere with the rule of this country?

A No; I don't know where I would lead them to on this earth better than America.

Q Is there anything better than America?

A No.

Q Mr. Taylor, there has been quite a bit said about saluting the Flag: does the book "God and the State" or "Loyalty"—does any of these books say it is wrong general-

ly for people to salute the Flag, or does it say it is wrong for anyone—

A It only says it is wrong to compel one to salute the Flag.

Q Have you agreed to not salute any flag? A Yes.

Q How did you— Why did you make that agreement, and who did you make it with?

A Well, I made it with the Lord, for my protection and for the protection of my country, when I saw that trick used by Hitler to do what he has done over there, by telling the people to salute that Flag— compulsory flag saluting led Germany into the position it is now.

BY MR. GILLESPIE:

We object to that.

BY THE COURT:

I sustain the objection.

BY MR. CLARK:

Q Are you commanded from the Scriptures, or are you not— aren't you under commandment by the Scriptures to carry out your covenant or agreement?

A Yes; that I make voluntarily, of my own accord, my life depending on keeping it.

Q And you agreed when Hitler, you say, started his move in Germany— that's when you agreed you wouldn't salute his flag or anybody else's flag?

A That's when I became real strong.

Q Do you have any disrespect for the flag of this country?

A No.

Q Do you disrespect the Flag?

A No, sir.

Q Do you respect the Flag?

A I do.

Q Do you respect people who salute it?

A I do.

Q Have they got a right to salute it?

A They have.

Q Have you ever at any time taught anybody not to salute the Flag?

A No; I have not.

Q Will you ever teach them not to?

A No; I will not.

Q Have you taught anybody anywhere at any time to be disloyal?

A No.

Q To Mississippi or to the United States?

A I have not.

Q Are you now not claiming your liberty under the Constitution of the United States?

A That's what I am claiming, and I have the Constitution on my side, the Federal Government, John Edgar Hoover, and the—

BY MR. GILLESPIE:

We object to the argument.

BY MR. CLARK: Therefore, you respect this Government, don't you?

A I do.

Q Is there anything in that book you talked to them about that day, if you recollect—that's the book that is identified?

A No; I could find it, but it would take too long.

Q Do you remember anything in this one you talked about that day?

A This was in the bunch; I didn't pay any attention to it.

Q Look and see when it is copyrighted—it is "Loyalty". When was "Loyalty" copyrighted?

A In 1935.

Q What brought that forth? How come that book to be written?

A The question of school children—

BY MR. POWELL:

We object to that.

BY THE COURT:

I sustain the objection.

BY MR. CLARK:

I believe you didn't let me introduce that as an exhibit?

BY MR. GILLESPIE:

No, sir; that wasn't introduced. That was objected to and the objection was sustained.

BY MR. CLARK:

Q You did let these ladies have that book?

A Yes, sir.

Q Did you let Mrs. Joyner have that book?

A Yes; I did.

Q "Hope", I mean by that book?

A Yes; I did.

Q And for what purpose did you go around to make this call on these ladies?

BY MR. POWELL:

He has gone over that, at the very beginning.

BY THE COURT:

I believe he did.

A I have one reason I would like to mention. I called at Mrs. Denson's house at the request of Mrs. Joyner. That's how come me to go to Mrs. Joyner's. She said "our boys played together", and she would like for us to go over there because we had relieved their mind of some worry, and she wanted us to go and see Mrs. Joyner.

BY MR. CLARK:

Q Well, they testified you went over to comfort them, and that you said you went over to comfort them; is that part of the testimony true?

A That's true.

Q Did you play the phonograph record over there?

A My wife played it at Mrs. Joyner's at the first call.

BY MR. CLARK: [BY MR. GILLESPIE:]

We object to that; he is not charged with playing a bad record.

BY MR. CLARK:

It goes to the purpose and purport of his visit.

BY THE COURT:

I sustain the objection.

BY MR. CLARK:

Q You distributed all these books, did you?

A Yes.

Q You don't deny that?

A No.

Q Is there anything disloyal in them?

A No; nothing.

Q Anything to tend to teach people to disrespect the Flag?

BY MR. GILLESPIE:

We object to that.

BY THE COURT:

I sustain the objection.

BY MR. CLARK:

Q Did you intend to teach any disloyalty when you showed this book?

A No.

Q Did you intend at any time to teach disrespect to the Flag at any time in placing, or showing or selling this literature?

A Never.

Q Did you intend to teach disloyalty or disrespect to the Government or the Flag?

A No.

Q At any time, or in any of this literature?

A No; never did.

BY MR. CLARK:

That's all.

CROSS EXAMINATION

BY MR. GILLESPIE:

Q When did you say you moved to Canton?

A It must have been about the first of March.

Q And where did you live prior to that time?

A McComb, Mississippi.

Q Were you also preaching at McComb?

A I was.

Q And where did you live before you went to McComb?

A Birmingham, Alabama.

Q How long did you live in Birmingham?

A Twelve months.

Q And where did you live before you went to Birmingham?

A Montgomery, Alabama, a couple of years.

Q And before that?

A Well, I was in Elmore County, about thirty miles above them.

Q Where were you reared in Alabama?

A Tuscaloosa.

Q And how long have you been teaching and preaching this doctrine you are now preaching?

A Twenty years.

Q How old are you?

A Thirty-seven.

Q Now, when were you ordained as a minister?

A In 1931, about April, I think it was.

Q Who ordained you?

A The Watchtower Bible and Tract Society, and the Lord first.

Q Do you hold any sort of license to preach the Gospel from any church?

A I do.

Q Where is it, please, sir?

A Up at Selective Service Draft Headquarters, Tuscaloosa.

Q What is your preacher's license doing over there?

A I submitted that so they could determine my proper rating.

Q And was it necessary for you to leave a license there?

A I don't know whether it was or not. I told them to return it.

Q And they never returned it?

A That is being considered now.

Q What is being considered?

A About whether to return it or not. I have already received my 4-D, and I have not had time to receive the other.

Q What has happened to the license?

A It has not been returned.

Q Do you know why it has not?

A No.

Q Who licensed you to preach?

A The organization.

Q What organization?

A The Watchtower Bible and Tract Society.

Q What authority has the Watchtower Bible and Tract Society to ordain you as a minister of the Gospel?

A They are fully authorized in every law of the land, the same as any other organization.

Q Then, you maintain you have the same right as any other minister?

A Absolutely.

Q Have you ever performed any marriage ceremonies?

A I haven't taken out the necessary license.

Q You haven't any license at all?

A I have my ordination.

Q Is this what you call your ordination?

A No; that's only evidence.

Q What other evidence have you?

A I have a sworn statement of the Selective Draft signed by the Superintendent of Evangelists.

Q Now, this thing you introduced here a moment ago is "To Whom it may Concern", and it certifies that R. E. Taylor, whose signature appears below, is ordained, and so forth, and it is not signed by anybody except you, is it?

Now, that's a printed signature on that, isn't it?

A Would you like for me to get my sworn statement?

Q That's what I would like to have, if you have it.

A I have it.

Q Who printed that?

A The Watch Tower Bible and Tract Society.

Q How do you know they did?

A Well, I have been up there and seen them printing them.

Q You could go down here and get Mr. Charley Harris to print you one exactly like it, if you wanted to, or any other printer?

A If I would do it.

Q Anybody could print that, couldn't they? Nobody signed that except you, have they?

A Yes; anybody could print it.

Q Now, nobody has signed that, or done any writing on that except you, have they? Who wrote that that is on there, the writing?

A I wrote this, and that's the President's signature.

Q Printed signature?

A Yes.

Q That's the one you say anybody could print? How long has this President been dead?

A No; I didn't say to print his signature.

Q How long has this President been dead?

A January 8th, I believe.

Q Which year, this year? A Yes.

Q So, the only evidence you have got that you are a minister here at all, is a card, the only writing on there is the writing put on there by yourself?

A No, I have another card by our present President. It is over there, I guess; I had it today; I have a new one, just out.

Q Well, before we get that-- "This is to certify that R. E. Taylor"— Who wrote the R. E. Taylor?

A I did.

Q Now, the name "Ralph E. Taylor", who wrote that?

A I did.

Q When did you get a letter from Mr. Rutherford telling or authorizing you to write that in there?

A I don't remember the date, but he tells me to.

Q Have you got that letter?

A Not with me, no, sir.

Q Did you find the other appointment?

A I have had it with me all day; it ought to be in there. I used that because we had it in the preliminary trial.

Q I want to see all the ordinations you have?

A That's the present President's signature.

Q That isn't written, is it?

A Looks to me like—yes, it is stamped on there.

Q Stamped on there?

A Yes.

Q Who stamped it on there?

A I don't know.

Q You don't know?

A No, sir.

Q Who wrote R. E. Taylor up here?

A I did.

Q And who wrote it down here?

A I did.

Q Then, the only writing on both of these ordinations you have got is writing you put on there, isn't it?

A Well, if you make an issue on that, I will—

Q (Interrupting) That's the only writing on there, isn't it?

BY THE COURT:

It will have to be identified.

BY MR. GILLESPIE:

I offer this and ask that it be marked an exhibit.

Said document was identified by the Reporter as Exhibit "A", Witness Taylor, on cross ex-

amination, and is in words and figures, as follows:

BY MR. GILLESPIE:

Q If Nelson Cauthen had gotten hold of one of these things he could sign it and be a preacher too, couldn't he?

A It takes more than that for Jehovah's Witnesses.

Q And it would take more than that to be a Jehovah's witness?

A That's right.

Q But he could be a preacher all right?

A Yes, sir.

Q And that's the only evidence you have got to offer this jury here at all that you are an ordained minister?

A It looks like my other, if I have it at the house, would be worth something.

Q These other folks have sworn here too, before you took the stand?

A I would like to prove it.

Q Isn't it a fact you have no authority on earth to perform any function of a minister for any church or any denomination on earth?

A No; I do not know that.

Q The only organization you do have any authority to preach for is this publishing company?

A I am ordained as one of Jehovah's Witnesses; that's right.

Q And who ordained you— what is the name of that Watch Tower business?

A That's the organization, and Sullivan is the Superintendent of Evangelists.

Q You did go out to Mrs. Bryant's, didn't you?

A Sure.

Q You had a conversation with her out there, and you distributed this literature?

A Yes.

Q There is no doubt about that?

A No, sir.

Q You have been distributing that literature wide-spread all over the country?

A That's right.

Q You did go out and have a conversation with these ladies?

A That's right.

Q About how many of those books do you suppose you have distributed throughout this country? What is your best judgment about how many you have distributed?

A You mean the United States?

Q Have you distributed them anywhere else?

A Yes, sure.

Q Where?

A I thought you meant in this State.

Q We are covering all of the territory you have covered? How many have you distributed in this State?

A I don't know.

Q Well, about how many?

A Well, I might as well say one thing as another, if I must guess, for I don't have any idea.

Q Approximately? You are trading them for butter and egg, and butter-milk?

A I wouldn't, if the people give me the eggs for nothing.

Q Your idea is and has been all the time to get them out?

A Why not?

Q I am asking you if that hasn't been your purpose?

A That's right.

Q To get as wide a distribution of this book as possible, among both white and colored?

A That's right. However, I haven't called on the colored much myself. I have worked as much as twelve counties without meeting with the colored.

Q Weren't you with Mrs. Taylor when she distributed some among the colored inhabitants of Madison County?

A A few.

Q About how many would you say you distributed in this County?

A Knowing so little about that, I wouldn't want to make a guess.

Q You have just been here about three months?

A Yes.

Q Have you distributed a large or small number?

A A medium amount.

Q A medium amount?

A Yes.

Q Haven't you any sort of idea of what a medium amount would be?

A Well, I would say several hundred.

Q Several hundred since you have been here?

A Yes.

Q And how are you paid for that? Who pays you?

A Well, I haven't failed yet to answer questions that were asked me; I have no secrets; I see no reason in not telling you—

BY MR. CLARK:

We object to that.

BY MR. GILLESPIE:

I think it would be interesting to know.

BY THE COURT:

He is on cross examination.

BY MR. CLARK:

Go ahead and tell him.

BY MR. GILLESPIE:

Q Why do you object to telling the fact?

A I don't object. You know why I might object.

Q I haven't the slightest idea, if there is nothing wrong about it?

A There are two ways. I order my literature in large quantities, at wholesale rates, and naturally get them a little cheaper, and that's my margin of expense money.

Q Then, you tell this jury that nobody is paying you

any salary or commission for distributing this literature?

A Yes and no.

Q Well, which is it, yes or no?

A There is conditionally. We can get up to as high as the whole amount of \$25.00 a month, conditionally.

Q Conditioned upon what?

A Upon our getting in so much time. If we don't work we don't eat.

Q And who is holding the eat-bag for you? In other words, who are you working for?

A I am quoting the Bible—nobody is holding the eat-bag.

Q How do you live?

A By ordering these books in large quantities and getting them cheaper; the margin is my expense money, coupled with the \$25.00 a month, if I get in a certain amount of time.

Q \$25.00 what?

A \$25.00 a month.

Q If you sell so many?

A No; if I put in a certain amount of time.

Q Who is paying you to put in that time? Who gives you the \$25.00?

A The Watch Tower Bible and Tract Society.

Q Do you know who is behind that?

A Yes.

Q Who is that?

A Jehovah God, only.

Q Then, God pays them to pay you?

A That's right. We believe that.

Q Now, what places have you distributed that besides the United States—you were going to tell us a minute ago?

A Well, I have only been out and distributed that at one place outside of the United States; that's while I was in the Army in Honolulu.

Q In the Army?

A Yes, sir.

Q How long did you stay in the Army?

A About eighteen months.

Q How come you to get out?

A Well, in the first place, I didn't want to stay in three years, and they explained you can buy out in one year if you like. I went over the year, and my sister got me out on account of my mother, who was quite sick, and I paid out. She wanted me to get out, so then I bought out.

Q Who did you buy out?

A You can buy out in Honolulu for \$140.00.

Q Who did you pay that \$140.00 to?

A Who do you suppose?

Q I don't know?

A The Government.

Q I want to know, so when I get in I can get out.

A You are unpatriotic.

Q While you were, then, in the army you were distributing this literature?

A That's right.

Q And then you bought out, and now you are going—you did go out and have these conversations, or had some conversation with these ladies, didn't you?

A Sure.

Q Now, do you deny to this jury that in the presence of Mrs. Bryant and Mrs. Joyner that you made the statement to the effect that Hitler would rule, and that he wouldn't have to come here, and wouldn't come here, but would rule anyway? Do you deny you made that statement, or a similar statement to that?

A I would like to deny it over the radio.

Q Do you deny it under oath there, where you are?

A Yes.

Q Do you deny you made a similar statement to Mrs. Denson here too?

A I do.

Q Who was present when the conversation occurred between you and Mrs. Joyner and Mrs. Bryant?

A Well, my wife, and little girl, and Mrs. Joyner and Mrs. Bryant.

Q Where is your wife?

A She is not here.

Q She knows you are being tried here, don't she?

A She knows I was to be tried.

Q She is still in Ohio?

A Yes.

Q How old is your little girl?

A Five.

Q She would be too young, but your wife is not here?

A No.

Q And you also deny you had this conversation with Mrs. Denson—she testified to?

A I do.

Q Do you deny you stated to Mrs. Joyner and to Mrs. Denson that their boys may have thought they were doing right, but that it was wrong for them to fight the enemy?

A Certainly I deny that.

Q Do you deny that you stated to them that it was wrong for the President of the United States to put the boys in uniform and send them over, that they were just being sent over and show for nothing?

A Emphatically, I do deny that.

Q And you deny you said anything of like import?

A I deny I said anything similar to it, unless she could construe the 17 Chapter of Revelation and what I have said here today of my being favor of Hitler, which I don't see how she did.

Q Then, you say you said nothing that could possibly have been construed by them—

A (Interrupting) I can see only one point, and that wasn't mentioned in this hearing; it was in the preliminary hearing; when Mrs. Joyner said that I said Hitler would rule this country, I tried to think that she had in mind that point that I was talking about, totalitarianism in Hitler;

anybody will agree totalitarianism is threatening the world.

Q And you didn't mention Hitler's name?

A Oh! yes; I mentioned Hitler's name.

Q I mean in connection with ruling?

A No; not in connection with ruling this country.

Q How long have you known Mrs. Denson?

A Since I called on them at that time.

Q And Mrs. Joyner?

A The same time.

Q And Mrs. Bryant?

A It all happened in about a week.

Q Do you know of any ill-will or prejudice that these ladies entertain towards you?

A Personally?

Q Yes.

A No.

Q And yet you tell the jury that every word they stated here with reference to that is untrue?

A Yes, with all due respect, not being their judge, I deny those charges, with all due respect to their sincerity, I deny that. I should go beyond them to the others they mentioned; I am dealing with those who caused them.

Q Then, you say somebody caused Mrs. Denson and Mrs. Joyner to say something that was untrue?

A I do.

Q You make that charge to this jury, do you?

A I don't make any charge or accusation.

Q You make that statement, do you?

A I make that statement, according to what they said, they were influenced by others to say that, with all due respect to them.

Q You say they made the statement that they had been influenced to do that?

A Here is— and I would like to qualify that, not to compromise it— but I would like to say I can understand easily why a person would at first think that we were not

having the proper attitude towards the Flag, because Jesus himself was killed for treason against the Government; the High Priest said, "If we let this man go"—

Q I object to the argument. Then, you admit the teachings you would make would be calculated to make people believe you were disloyal?

A I said until investigation.

Q Then, you never had any other conversation with these ladies so they might make further investigation, did you?

A Tried to.

Q What?

A My wife tried to.

Q You tried to but haven't?

A Tried to, but failed.

Q So, when you left them you admit what you talked to them was calculated to make you believe disloyalty?

A No; if they had the books they could have read it.

Q Isn't that what you said to the jury?

A No. I am trying to be honest to the last degree. We talked about the Kingdom of Heaven.

Q But you said you could understand why at first they might think that your teachings were disloyal? What did you mean?

A Hold no malice or prejudice.

Q That's not the question, of you holding malice or prejudice. Why did you say that your teachings to them might lead them to believe you were disloyal?

A If you won't let me explain, I will say yes and no, because I have some explanation and you are misconstruing it.
BY THE COURT:

Answer the question and you can explain.

A (Continuing) If you will accept an explanation as an explanation, and a possibility, and not make it a fact, I will explain; but if you are going to use it as a fact to intimidate me, I won't do it.

BY MR. GILLESPIE:

Q I am not trying to intimidate you. You made the statement you could see—you yourself could see—why your teachings to them might make them believe you were disloyal to the Government. Did you state that or not there to the jury?

A In kindness and consideration to them, I say we teach the Kingdom of Heaven.

Q You made that statement?

A You said I could explain.

Q When you make the statement. Did you make that statement or not?

A Yes.

Q Now you may explain?

A I used to be a Baptist; there are some Baptists here; their creed says at the end of the world the earth will be burned up with a literal fire. I used to believe that. Ecclesiastes says "One generation will pass away"—

BY MR. GILLESPIE:

If that's the explanation it is over my head.

BY MR. CLARK:

Well, let him finish.

A (Continuing) Ecclesiastes 1 : 8, says: "One generation passeth away, and another generation cometh; but the earth abideth for ever."

BY MR. GILLESPIE:

Q Therefore, it couldn't be burned up if it abideth forever?

A That's right.

Q And that's your explanation to the jury as to why you said you could see they would think you were disloyal?

A That's my explanation, but I wouldn't say that's why they would say I was disloyal.

Q What was it you said about them saying that somebody influenced them to make these charges against you?

A If you will like for me to repeat it, it will be easy. It

has been said several times Mr. Bell told them that's against the Government, and they laid it down.

Q When did they tell you any such thing as that happened? Are you testifying about what they testified here today?

A They said that in the former hearing, we quit reading the books when they came.

Q They made no statement to you to that effect?

A No; but that and today is where I got it.

Q From the witness stand; the same thing they told the jury is what you are talking about?

A On that point.

Q In other words, you haven't heard them say anything today that the jury didn't hear them say, have you?

A That's right.

Q Now, you believe this stuff, don't you?

A With all my heart.

Q And you teach it, don't you?

A That's right.

Q You teach what you believe?

A Yes.

Q And you teach everything you believe?

A I believe it so much, I couldn't keep quiet about it.

Q You believe it to such an extent you will teach and fight about it?

A Yes, the weapon is mentioned in Ephesians, the sixth chapter—"And take the helmet of salvation, and the sword of the Spirit, which is the word of God."

Q Let me understand you. You believe this you are talking about?

A Yes, sir.

Q And you teach it, all you have been talking about, as your belief?

A I don't teach all of it, for this reason—

Q (Interrupting) What part do you teach?

A We believe the Bible is a light unto our feet. We are

teaching present truth. We don't teach some of the things written in the past. We have courage to make improvements, and walk in the light. I can show you some things in our literature we don't preach.

Q You distribute it and let the public take it as it is, and other things you teach?

A Do you know why these booklets went out? You notice I said I gave them twenty-two for thirty-five cents—there were some old booklets to get rid of.

Q You don't feel it is right to salute the Flag, do you?

A For me, no.

Q And you don't salute the Flag, do you?

A No.

Q And you just said you taught what you believed, didn't you?

A Well, if you are trying to trap me, you made a mistake.

Q I am not trying to trap you. You don't believe it is right to salute the flag?

A Because I already established with the Lord not to salute the Flag.

Q You don't believe it is right to salute the Flag?

A Yes.

Q I thought you said you didn't? You don't salute it, do you?

A I am just getting used to you. Do you?

Q You don't salute it, do you?

A No.

Q If it is right, why don't you salute it?

A If it is right to salute the Flag, why don't I salute it?

Q That's right.

A I have agreed, as early Christians thought, it was wrong. I took an obligation on myself, or put myself in a class to, myself, and with all respects to those ladies who do salute it, but I am in a class that is too high, and I am fighting for what my forefathers started this country for.

Q You won't salute the flag?

A Should I salute any flag?

Q I don't know.

A No.

Q You don't believe it is ~~is~~ right to salute it; if you did you would still do it yourself?

A It is wrong for me.

Q Don't you teach the same thing to other people?

A Absolutely not.

Q Why don't you teach it to other people, if you believe it to be right, and you are a preacher?

A I would be committing a sin to tell a person not to do what is right for him to do.

Q It would be all right for him to do it?

A It would be all right for me too, if I wanted to do it. If I wanted to salute it, I would salute it.

Q And that's what you teach?

A No; we don't make that a study.

Q Who is the first fellow that told you about not saluting this Flag? You will let me read you this sentence on Page 8 of "Loyalty"; you try to get folks to be Christians, don't you?

A I do.

Q You are certain of that, and going to stick to that?

A Yes, sir.

Q I see here, underscored: "For a Christian to salute a flag is in direct conflict with God's"—or "direct conflict with God's specific commandment." That's in the book you distributed, isn't it?

A Yes, sir.

Q That's in there, isn't it?

A Yes.

Q And you said you are a Christian?

A I am a Christian.

Q Then, you said a minute ago you didn't believe it is a sin. Which is correct? Is it or isn't it?

A I had better get you straight. What did you say?

Q You said a moment ago it was not wrong to salute the flag, but you wasn't going to do it; then I asked you if you were a Christian, and you said you were, and in that book it says it is a sin for a Christian to salute the flag—

A (Interrupting) It is wrong for me, or anybody in my position to do so, but not others.

Q In your position— you mean as a minister or as a member of the—

A (Interrupting) No, me as one who has decided that saluting the flag is— Exodus 3:20 says "Thou shalt not make unto thee any graven image or any likeness"— I took that perfect high rule on me, and I am having to fight for it.

Q You and other?

A If a person is in my same position that rule applies to him.

Q In other words, if he feels as you do?

A That's right.

Q How long have you had that belief?

A Which belief?

Q That you wouldn't salute the Flag?

A Just a few years.

Q How many years?

A Oh! along about—I think about 1934 or 1935—probably 1934.

Q When did you say you were in the army?

A 1931. I got out of the army in 1931.

Q Got out to keep from saluting the Flag?

A No; I started in to stay twelve months.

Q You had to salute it in there?

A Glad to, because it was required by proper authorities. Do you know what those authorities were?

Q Yes, I sure do.

A The United States Government and my conscience—the United States Army and my conscience.

BY MR. GILLESPIE:

That's all.

BY MR. CLARK:

Q I would like to ask you in regard to what we have in European history that made you make up your mind about that flag— he was trying to bring it out?

A What crystalized it was when Hitler started and wanted to make the flag an object or a club to take the peoples' liberties away from them. That's when I learned how the flag should be used, and that's when I made up my mind to be on the safe side.

Q These books they have got here "God and the State" and "Loyalty" shows that that grew out of the Hitler—

BY MR. GILLESPIE:

We object to that; the books speak for themselves.

BY MR. CLARK:

That's all.

BY MR. GILLESPIE:

Q Are you a conscientious objector?

A No, sir; nor a pacifist.

BY MR. GILLESPIE:

That's all.

(WITNESS EXCUSED)

BY MR. CLARK:

The defendant rests. I want to make this motion.

The jury here retired by order of the Court, and in the absence and out of the hearing of the jury, the following proceedings were had and entered of record:

Now comes the defendant in the above entitled and numbered cause and files this his motion for directed verdict at the close of the case and when all evidence is in, and as grounds therefor says:

ONE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session of 1942, is void on its face and unconstitutional because Sec-

tion 1 thereof deprives the citizens and residents of Mississippi, and particularly this defendant, of his rights of freedom to worship Almighty God according to the dictates of his conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi, and the First Amendment to the United States Constitution, and Section 1 of the Fourteenth Amendment to the United States Constitution.

TWO

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional as construed and applied to the activity of this defendant because Section 1 thereof deprives defendant of his inherent rights of freedom to worship Almighty God according to the dictates of his conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi, and the First Amendment and Section 1 of the Fourteenth Amendment to the United States Constitution.

THREE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 1 thereof is unreasonable and in excess of the police powers of the State of Mississippi, thereby permitting the denial of liberty without due process of law, contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

FOUR

The statute under which the indictment is drawn, known as House Bill 689, of the Regular Legislative Session 1942, is unconstitutional because section 1 thereof is vague, too general, indefinite and permits speculation on the part of the jury and court trying the cause, thus constituting a

dragnet, both on its face and as construed and applied, all contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

FIVE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because section 2 thereof is unreasonable and in excess of the police power of the State, and is vague, indefinite and a dragnet, in violation of Section 1 of the Fourteenth Amendment to the United States Constitution.

SIX

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because the entire statute denies equal protection of the laws and discriminates between classes contrary to Section 1 of the Fourteenth Amendment to the United States Constitution.

SEVEN

The indictment fails to allege any facts or circumstances showing the commission of any public offense or the violation of any law of the State of Mississippi.

EIGHT

The State has wholly failed to offer any evidence whatsoever as to the defendant's guilt and the indisputable evidence shows that the defendant is not guilty of violating any law of the State of Mississippi, and is not guilty of the act charged in the indictment.

Wherefore, defendant prays that upon consideration hereof the Court exclude all the evidence, grant this motion and instruct the jury to acquit the defendant and by their verdict say "We the jury find the defendant not guilty", and render a judgment dismissing the indictment and discharg-

ing the defendant with his costs, and defendant prays for such other and further reliefs as he may show himself justly entitled to.

BY THE COURT:

Let the motion be overruled.

Stenographer's Certificate

STATE OF MISSISSIPPI, County of Hinds

I, R. S. Streit, Official Court Reporter, in and for the Seventh Circuit Court District of the State of Mississippi, hereby certify that the foregoing pages, numbered 1 to 124, inclusive, contain a full, true and correct transcript of my stenographic notes taken upon the trial of the cause shown in the caption hereof.

I further certify that I have this day filed with the Circuit Clerk of Madison County, Mississippi, the original and carbon of this transcript, and that I have notified by U. S. Mail, postage prepaid,

Hon. H. B. Gillespie, District Attorney, Raymond,
Miss.,

Hon. G. C. Clark, Waynesboro, Mississippi,

of my action in so filing this transcript with said Clerk.

This 25 day of August, 1942.

R. S. Streit
Official Court Reporter.

Stenographer's fee \$56.25

Clerk's Certificate

[fol. 183]

STATE OF MISSISSIPPI

V.

R. E. TAYLOR, *Defendant*

No. 8672

I, R. C. Randel, Clerk of the Circuit Court of Madison County, Mississippi, do hereby certify that the foregoing 184 pages contain a true and correct copy of all the pleadings, evidence, instructions and judgment and decree appealed from, and constitutes the record as it appears in my office in the above entitled cause.

Witness my signature this the .. day of A. D. 1942.

CIRCUIT CLERK.

Opinion**IN THE SUPREME COURT OF MISSISSIPPI
IN BANC**

No. 35143

(Opinion rendered January 25, 1943)

R. E. TAYLOR v. STATE OF MISSISSIPPI**ROBERDS, J.**

The Legislature of Mississippi at its 1942 regular session enacted Chapter 178, General Laws of Mississippi 1942, which the Reporter will set out in full.

Appellant was indicted, tried, convicted and sentenced for violation of Section 1 of that Act. He appeals.

He first contends that the evidence is not sufficient to support his conviction. }

Summarized the evidence is that appellant and his wife, the latter part of May and the first of June 1942, appeared at the homes of a Mrs. Joyner and Mrs. Denson in Madison County, Mississippi, and then and there, according to the testimony of Mrs. Joyner, said to those present:

"Well, he came in and said he wanted to talk with me; and they came in and sat down and he began to talk, and looked through the Bible; he didn't read any in the Bible, but just turned through it, and talked; and told me that the President was doing wrong to send our boys across to be killed for nothing, and that Hitler would rule, and he wouldn't have to come over here to do it, but he would do it; he would rule, but he wouldn't come here. And he said it was wrong for us to salute the Flag; that we just worshiped our Government and our Flag, and looked on it as something sacred; and that it was wrong for us to do that; and that no doubt my son thought he was doing the right thing by going where he was and doing what he did; but that it was wrong for him to fight the enemies, and to go there."

A Mrs. Bryant, who was present, testified:

"Well, he said it was wrong for our President to send

these boys across in uniform to fight our enemies: said it was wrong to fight our enemies; said they were being shot down for no purpose at all; said Hitler would rule, but he wouldn't have to come down here to rule; and he said the quicker the people here quit bowing down and worshipping and saluting our Flag and Government, the sooner we would have peace."

Mrs. Denson gave the same version in substance of what was said at her home, except she added:

"He said there were just as many sheep—he divided the people as sheep and goats, the Jehovah's witnesses were the sheep and the believers; and he said there were just as many sheep in Germany as there were here. And just at that time, Mrs. Taylor spoke up and says, 'You know you would hate to see a German mother lose her son as much as you would anyone else.' But he told me to study the literature, and that I would get comfort from it." He had theretofore appeared at the home of Mrs. Bryant and sold her some literature.

Mrs. Joyner and Mrs. Denson had each lost a son in the attack upon Pearl Harbor. He also said their sons would come back and live with them forever. Appellant says it was his intention to comfort them. They were strangers to appellant and the record does not disclose how he knew their sons had been killed.

Appellant admitted making some of the statements and flatly denied making others. He alone testified in his own behalf as to whether the statements were or were not made. His wife, who was present when it is claimed the statements were made, was not present at the trial and did not testify. It was the province of the jury, not ours, to say who was testifying truthfully—these three ladies or appellant.

The proof furthermore is that each of these three ladies purchased from appellant certain written literature, consisting of twenty-two books and pamphlets, for thirty-five

cents. A number of these books and pamphlets were introduced in evidence. Certain excerpts from this literature were selected and introduced by the State. Four of such excerpts were:

"All nations of the earth today are under the influence and control of the demons. . . . All the nations suffer the same fate or come to the same end, because all nations of earth are on the wrong side, that is, on the losing side. All of such nations are against the Theocratic Government, that is, the government of kingdom of Almighty God. . . . and all are under the control of the invisible host of demons, . . ."

"But to compel people to salute a flag or any other image is wrong, and particularly if that person believes on God and Christ Jesus. For the Christian to salute a flag is in direct violation of God's specific commandment."

"Almighty God commands that they must remain entirely neutral in the controversy. Because his covenant people are servants and representatives of THE THEOCRACY they must hold themselves entirely aloof from warring factions of this world."

"Non-Christians may salute the flag without reference to the foregoing rules. Those who are real conscientious Christians are in a class entirely different from others of the world. Jehovah's witnesses are Christians and in a covenant to be entirely obedient to God's law. They must teach their children and admonish them to obey God's law, as he has commanded. They are conscientious and they sincerely believe that for them to indulge in the formalism or ceremony of saluting any flag is a violation of God's specific commandment . . ."

Other passages in this literature teach that "the so-called democracies" hold out no hope of peace, security, life or happiness—that the only place of safety is in Theocracy; that if there is a conflict between state law and what Jehovah's witnesses conceive to be Jehovah's law, the state law should not be obeyed; that Jehovah's witnesses take a pledge not to salute the flag and that to undertake by law to force a child to salute the flag is to "frame mischief by law." Appellant justified his attitude and conduct by quoting on the stand certain passages of the Scriptures and calling attention to other passages therefrom appearing in the literature.

In addition to the foregoing, appellant himself testified that he was an ordained minister. His earthly ordination was evidenced by a printed postcard containing the printed signature of the Watchtower Bible and Tract Society and its president, and which card has a blank space for the name of the person to be ordained and a blank for the identifying signature of such person. Both of these blanks had been filled in by appellant. Appellant also evidenced his ordination as a minister by referring to certain Scriptural passages. He said he had been a full time Jehovah's Witness for twelve years; that he came to Mississippi from Alabama and had been here some three months; that he had contacted many of the other citizens, white and colored, of Madison County and had sold to them many sets of the literature; that his financial income from this work consisted of the excess of the sale over the cash prices of the literature and as much as \$25 per month paid him by said Society, "upon our getting in so much time. If we don't work we don't eat"; that there were one hundred and forty-four thousand such workers in the United States; that the workers were under a superintendent; that he was not a pacifist and he loves his country; that he was in the Army in the last World War on duty in Honolulu, and after having served about eighteen

months he purchased his release therefrom by paying "the government \$140."

Placing these words and acts against the statute, it will be seen that they may be reasonably construed to violate it in these respects: (1) that they are calculated to encourage disloyalty to the Governments of the United States and of Mississippi, and discourage enlistment in the armed forces of the Nation; (2) that they advocate the cause of the enemies of the United States; and (3) that they reasonably tend to create an attitude of stubborn refusal to salute, honor, or respect the flag or government of the United States. Assuming the validity of the law, we think the evidence is sufficient to support the verdict of the jury.

Appellant contends that this statute is unconstitutional as to him because it deprives him of the right of free speech and free press guaranteed by the Constitutions of Mississippi and the United States. The act, as an entirety, is sufficiently comprehensive in its objects, including, for instance, sabotage and acts of violence against the sovereign, to meet this constitutional attack, but the question is whether it is constitutional as applied to appellant and his conduct. The question should be tested by the powers of the sovereign in war-time and the corresponding rights and duties of the people during such time. Even in peace-time the right of free speech does not mean unbridled license of speech. The right may be abused, for which abuse punishment may be meted out under the police power of the State. The Constitution protects the right but not the abuse. For instance, one has no right even in times of peace to use language, oral or written, which wrongfully injures another in person or property, or tends to corrupt public morals, induce crime, endanger the public safety, or which advocates a change in industrial conditions or the form of government by use of force, violence or other unlawful means. *State v. Quinlan*, 86 N. J. L. 120, 91 Atl. 111; *State v. Boyd*, 86 N. J. L. 75, 91 Atl. 586, affirmed 87 N. J. L. 328,

95 Atl. 599; *State v. Fox*, 71 Wash. 185, 127 Pac. 111, affirmed in 236 U. S. 273, 59 L. Ed. 573; *People v. Most*, 171 N. Y. 423, 58 L. R. A. 509, 64 N. E. 175; *State v. Gibson*, (Iowa) 174 N. W. 34; *State v. Tachin*, 92 N. J. L. 269, 106 Atl. 145; affirmed 108 Atl. 318; *State v. Gabriel*, 95 N. J. L. 337, 112 Atl. 611; *People v. Gitlow*, 195 App. Div. 773, 185 N. Y. Supp. 783; *Re Moriarity*, 44 Nev. 164, 191 Pac. 360; *Re McDermott*, 180 Cal. 783, 183 Pac. 437; *People v. Malley* (Cal.) 194 Pac. 48; *People v. Steelik*, (Cal.), 203 Pac. 78; *State v. Worker's Socialist Pub. Co.*, (Minn.) 185 N. W. 931; *Whitney v. California*, 273 U. S. 357, 71 L. Ed. 1095 (affirming 57 Cal. App. 449, 207 Pac. 693); *People v. Wagner*, 65 Cal. App. 704, 225 Pac. 464; *People v. Cox*, (Cal.), 226 Pac. 14; *Burns v. U. S.*, 274 U. S. 328, 71 L. Ed. 1077, 47 S. Ct. 650; *Re Denton* (Kan.), 195 Pac. 981; *People v. Ruthenberg*, (Mich.) 201 N. W. 358, (writ of error dismissed in 273 U. S. 782, 71 L. Ed. 890, 47 S. Ct. 470); *Berg v. State* (Okla.), 233 Pac. 497; *Com. v. Widovich*, (Pa.) 145 Atl. 295, (affirming 93 Pa. Super. Ct. 323, appeal dismissed and cert. denied, 280 U. S. 518, 74 L. Ed. 588, 50 S. Ct. 66.) Even so, if this were peace-time legislation, the writer would not hesitate to hold it unconstitutional as to appellant.

But this one of several statutes passed by the Mississippi Legislature in 1942 to aid in the prosecution of the present war and to meet conditions arising out of the war. The reasons for its enactment are summarized in the preamble. It is an emergency, temporary war act, and by its express terms it will expire upon termination of the war. "When a nation is a war, many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight, and that no court could regard them as protected by any constitutional right." *Schenck v. U. S.*, 249 U. S. 47, 63 L. Ed. 470, 39 Sup. Ct. Rep. 247. Again, "To the end that war may not result in defeat, freedom of speech may, by act of Congress, be curtailed or denied so that the morale of the people and the

spirit of the army may not be broken by seditious utterances; freedom of the press curtailed to preserve our military plans and movements from the knowledge of the enemy; deserters and spies put to death without indictment or trial by jury; ships and supplies requisitioned; property of alien enemies, theretofore under the protection of the Constitution, seized without process and converted to the public use without compensation and without due process of law in the ordinary sense of that term; prices of food and other necessities of life fixed or regulated; railways taken over and operated by the government; and other drastic powers, wholly inadmissible in time of peace, exercised to meet the emergencies of war." *United States v. Macintosh*, 283 U. S. 605, 75 L. Ed. 1302.

The Espionage Act enacted by Congress in 1917 (40 Stat. at L. 219, Chap. 30) and the amendment thereto in 1918 (40 Stat. at L. 553, Chap. 75, Comp. Stat. Sec. 10, 212c, Fed. Stat. Anno. Supp. 1918, p. 120) provide, *inter alia*, that whoever, when the United States is at war, shall "wilfully utter, print, write, or publish any disloyal, profane, scurrilous, or abusive language about the form of Government of the United States;" or its Constitution, military or naval forces, flag, or uniform, or any language intended to bring the form of the Government of the United States, or the Constitution, military or naval forces, flag, or uniform into contempt, or disrepute; or "wilfully utter, print, write, or publish any language intended to incite, provoke, or encourage resistance to the United States, or to promote the cause of its enemies;" or whoever shall wilfully advocate, teach, defend, or suggest the doing of any of the acts or things enumerated in the statute; or "whoever shall by word or act support or favor the cause of any country with which the United States is at war, or by word or act oppose the cause of the United States therein," shall be punished by fine of not more than ten thousand dollars or imprisonment for not more than twenty years, or both. The words

of this act are strikingly similar to the state act now under consideration. The Espionage Act, without exception, has been held constitutional as an emergency war act. *Frohwerk v. United States*, 249 U. S. 204, 63 L. Ed. 561; *Debs v. United States*, 249 U. S. 47, 63 L. Ed. 470; *Abrams v. United States*, 250 U. S. 616, 63 L. Ed. 1173; *United States ex rel Milwaukee S. D. Pub. Co. v. Burleson*, 255 U. S. 407, 65 L. Ed. 704; *Dodge v. United States*, 7 A. L. R. 1510, 258 Fed. 300, petition for writ of certiorari denied 250 U. S. 660, 63 L. Ed. 1194; *Equi v. United States*, 261 Fed. 53, petition for writ of certiorari denied, 251 U. S. 560, 64 L. Ed. 414; *Wimmer v. United States*, 264 Fed. 11, petition for certiorari denied, 253 U. S. 494, 64 L. Ed. 1030; *Dierkes v. United States*, 274 Fed. 75; *Seebach v. United States*, 262 Fed. 885. In the *Schenck* case, *supra*, the Court in drawing the distinction between peace-time and war-time legislation said "We admit that in many places and in ordinary times the defendants, in saying all that was said in the circular, would have been within their constitutional rights. . . ." In the *Dodge* case, *supra*, the Court held that the Constitutional guarantee of freedom of speech does not extend to the protection of utterances in time of war which involve the integrity of the nation or injure or tend to injure it.

A number of the states have passed sedition acts, some during the last World War and some in peace-time, having for their general object the curtailment of speech and action tending to create hostility to or the undermining of state and national governments. Some of these have been held unconstitutional as denying freedom of speech, or on other grounds; others have been held constitutional.

The Connecticut Statute (Chap. 312, Laws 1919), penalized disloyal or abusive matter concerning the form of government of the United States, its military forces, flag, or uniform, or any matter which was intended to bring them into contempt. This was held not to violate the right

of free speech and was a subject within the police power of the state. *State v. Sinchuck*, (Conn.) 115 Atl. 33, 20 A. L. R. 1515.

The Iowa Statute (Acts 37th Gen. Assem. c. 372) provides (1) that if any person shall incite insurrection or sedition etc. or shall attempt, by word or writing or other means, to do that; or (2) shall, by speech or writing or other means, advocate the subversion or destruction by force the government of the state or the United States; or (3) who shall by any method incite, abet or encourage hostility or opposition to either government, he is guilty of a crime. This did not abridge the right of freedom of speech. *State v. Gibson*, (Iowa) 174 N. W. 34.

The Montana Statute declared that whenever the United States is at war any person who shall utter, print, write, or publish any language calculated to incite or influence resistance to any duly constituted Federal or state authority in connection with the prosecution of the war, shall be guilty of a criminal offense. The act has been held constitutional in a number of state decisions. *State v. Kahn*, 182 Pac. 107; *State v. Wyman*, 186 Pac. 1; *State v. Smith*, 190 Pac. 107; *State v. Fowler*, 196 Pac. 992, rehearing denied 197 Pac. 847; *State v. Schaffer*, 197 Pac. 986, and in *Ex parte Starr*, 263 Fed. 145.

The New Jersey Court upheld the section of the law which made it a penal offense to advocate the subversion of the government by force, but denied validity to the provision making it such an offense to belong to an organization or attend meetings having for their purpose encouraging hostility or opposition to the state or national government, because the wording of the latter section covered the use of lawful as well as unlawful means. *State v. Tachin*, 106 Atl. 145, affirmed 108 Atl. 318. This appears to have been a peace-time statute and is in accord with the holdings generally under such statutes, as shown above.

Likewise the New York Statute, involving attempt to

overthrow the government by force or violence, or other unlawful means, and the advocacy thereof by word or writing was upheld in *Gitlow v. New York*, 268 U. S. 652, 69 L. Ed. 1138, (affirming 234 N. Y. 132, 539, 136 N. E. 317, 138 N. E. 438;) and *People v. American Socialist Society*, 202 App. Div. 640, 195 N. Y. Supp. 801. This was peace-time legislation (Laws 1909, Chap. 88, originally enacted in 1920).

But the prohibition of the use of disloyal language per se, in a Texas statute, as a war measure, was held to be a subject exclusively of Federal legislation, and not within the scope of state legislation, and was not within the police power of the state and violated the right of free speech, on the ground that the statute was so worded as to penalize one who uttered language of such nature, whether it was used under such circumstances as to make it reasonably provocative of a breach of the peace or not. *Ex parte Meckel*, 220 S. W. 81; *Schellenger v. State*, 222 S. W. 246.

Also, the Illinois Statute limited the means to force or violence and was upheld as peace-time legislation. *People v. Lloyd*, 304 Ill. 23, 136 N. E. 505; and likewise an act of the State of Pennsylvania, requiring force or violence and intent, *Com. v. Widovich*, 295 Pa. 311, 145 Atl. 295 (affirming 93 Pa. Sup. Ct. 323, appeal dismissed and cert. denied, 280 U. S. 518, 74 L. Ed. 588).

We now turn to authorities more directly in point on the question under consideration.

Chapter 463, Laws of Minnesota, approved April 20, 1917, a war act, in the first section thereof, made it an offense to advocate, or attempt to advocate, by word or writing, that men should not enlist in the military or naval forces of the United States, and the second section thereof provided: "It shall be unlawful for any person to teach or advocate by any written or printed matter whatever, or by oral speech, that the citizens of this state should not aid or assist the United States in prosecuting or carrying on war with the public enemies of the United States." Holm was

charged with circulating a pamphlet containing statements "this war was arbitrarily declared against the will of the people"; that the people are ten to one against it; that "the President and Congress have forced the war upon the United States," and are attempting by conscription to "force us to fight a war to which we are opposed;" that "this war was declared to protect the investments of Wall Street in the bonds of the allies." Holm said he was exercising his right of free speech. The Court said that he had abused the right—" . . . the freedom secured thereby is not an unlimited license to speak and publish whatever one may choose. It is settled that the state may prohibit publications or teachings which are injurious to society, or which tend to subvert or imperil the government or to impede or hinder it in the performance of its public and governmental duties without infringing the constitutional provisions which preserve freedom of speech and of the press;" that the right does "not grant immunity to those who abuse this privilege, nor prevent the state from making it a penal offense to publish or advocate matters or measures inimical to the public welfare." *State v. Holm*, (Minn.) 166 N. W. 181, L. R. A. 1918C 304.

In *State v. Gibson*, (Iowa) 174 N. W. 34, the indictment charged that defendant, "did attempt by speech, action, and manner of speaking to incite, abet, promote and encourage hostility and opposition to the government of the State of Iowa and of the United States," contrary to the sedition act of Iowa. The statute is summarized above herein. The Court held right of free speech was abused, saying the framers of the Constitution "did not intend to protect what might destroy the state."

In *State v. Kahn*, *supra*, Kahn used this language "this is a rich man's war, and we have no business in it. They talk about Hooverism—it is a joke. Nobody pays any attention to it. It don't amount to anything. The Lusitania was warned not to sail. They were carrying munitions and

wheat over for the allies. The poor man has no show in this war. The soldiers are fighting the battles of the rich."

The Court said "In time of peace the language employed by this defendant, or language of similar import, might not constitute a crime, and it may be true that it is beyond the power of the Legislature to make its use a crime in the time of peace; . . . as said by the Supreme Court of the United States: 'When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight, and that no court could regard them as protected by any constitutional right', citing the Schenck, Frohwerk and Debs cases, *supra*.

In the Gilbert case, *supra*, the State of Minnesota had a statute making it unlawful to advocate that men should not enlist in the armed services of the United States and also "for any person to teach or advocate by any written or printed matter whatsoever, or by oral speech, that the citizens of this state should not aid or assist the United States in prosecuting and carrying on war with the public enemies of the United States." Gilbert said "We are going over to Europe to make the world safe for democracy, but I tell you we had better make America safe for democracy first. You say, what is the matter with our democracy? I tell you what is the matter with it: Have you had anything to say at to who should be President? Have you had anything to say as to who should be governor of this state? Have you had anything to say as to whether we would go into this war? You know you have not. If this is such a good democracy, for Heaven's sake why should we not vote on conscription of men? We were stampeded into this war by newspaper rot to pull England's chestnuts out of the fire for her. I tell you if they conscripted wealth like they have conscripted men, this war would not last over forty eight hours." In overruling the contention that Gilbert was properly exercising his right of freedom of speech, the Supreme

Court of the United States, speaking through Mr. Justice McKenna, said "it (the right) is not absolute—it is subject to restriction and limitation. And this we have decided in *Schneck v. United States* (supra). We distinguished times and occasions, and said that 'the most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing a panic'"; also that in the *Frohwerk* case, supra, that the Court said "the 1st Amendment, while prohibiting legislation against free speech as such, cannot and obviously was not intended to give immunity to every possible use of language," citing also the *Debs* and *Abrams* cases, supra, and *Schaefer v. United States*, 251 U. S. 466, 64 L. Ed. 360, where it was said, that the curious spectacle was presented of the Constitution of the United States being invoked to justify the activities of the enemies of the United States. The conviction was sustained because we were then, as now, at war with Germany.

So far, we have not dealt with the question of the flag. We do that now.

In *Ex parte Starr*, 263 Fed. 145, a state statute making it an offense to utter or publish slurring language about the flag was held valid.

In *Com. v. Karvonen* (Mass.), L. R. A. 1915B, 706, 106 N. E. 556, Ann. Cas. 1916D, 846, the Court upheld a statute making it unlawful to carry in a parade a red or black flag or banner having upon it an inscription opposed to organized government, which is sacrilegious, or derogatory to public morals.

In *People v. Burman*, (Mich.) 25 L. R. A., (Ns.) 251, 117 N. W. 589, the Court upheld a municipal ordinance prohibiting the display of a red flag in a procession where it is likely to disturb the public peace.

On the other hand, a California court held invalid a municipal ordinance which made it unlawful to display, or to have in possession, a flag of any society or association which espoused principles or theories antagonistic to the

United States or its Constitution, because this included an effort to change the form of government by peaceful means. *Re Hartman*, 188 Pac. 548.

In *People v. Lloyd*, (Ill.) 136 N. E. 505, the court upheld a statute prohibiting, inter alia, the display of a flag at a public meeting, or in a parade, intending thereby to overthrow the government by force or violence.

In *State v. Sinchuk*, (Conn.) 115 Atl. 33, 20 A. L. R. 1515, a statute was held valid which provided, among other things, that it was an offense to publish matter abusive or disloyal of the form of government or the flag.

The Supreme Court of the United States, in *Stromberg v. California*, 283 U. S. 359, 75 L. Ed. 1117, held invalid a statute which made it an offense to display a flag at a public assembly "as a sign, symbol or emblem of opposition to organized government, or as an invitation or stimulus to anarchistic action, or as an aid to propaganda that is of a seditious character," because it might be construed to include an orderly opposition to government by legal means and within constitutional limitations.

In *Minersville School District v. Gobitis*, 310 U. S. 586, 84 L. Ed. 1375, the Supreme Court of the United States upheld a school regulation requiring all pupils to salute the American flag as a part of the daily school exercises, and providing that refusal to salute the flag should be regarded as an act of insubordination and dealt with accordingly.

Similar state statutes, or school regulations, were upheld in *People ex rel v. Sandstrom*, 279 N. Y. 523, 18 N. E. 2d 840, 120 A. L. R. 646; *Leoles v. Landers*, 302 U. S. 656, 82 L. Ed. 507 (dismissing appeal from 184 Ga. 580, 192 S. E. 218); *Hering v. State Bd. Ed.*, 302 U. S. 624, 82 L. Ed. 1087, (dismissing appeal from 118 N. J. L. 566, 194 Atl. 117) *Gabrielli v. Knickerbocker*, (Cal.) 82 Pac. 2d 391; and *Nichols v. Lynn*, (Mass.), 7 N. E. 2d 577, 110 A. L. R. 377. The District Court of the United States, Southern District of West Virginia, in the case of *Walter Barnette et al. v. West Virginia*

State Board of Education et al., not yet reported as this opinion is being written, speaking through Judge Parker, has aligned that court with the cases holding invalid rules of school boards requiring school children to salute the flag. The last six cases involve children of Jehovah's witnesses. These cases are persuasive, not decisive, on this question, because, with the exception of the Starr case, they involve permanent, peace-time rules and statutes commanding affirmative action by defendants, whereas the Mississippi Statute is temporary, emergency war-time legislation to restrain affirmative teaching and action operating upon and to the detriment of others, and to the injury of the general public.

The importance and far-reaching import of the attitude of appellant towards the flag, as disclosed by the evidence herein, are shown by the statements of Mr. Justice Harlan in *Halter v. Nebraska*, 205 U.S. 34, 51 L. Ed. 696: . . . a state will be wanting in care for the well-being of its people if it ignores the fact that they regard the flag as a symbol of their country's power and prestige, and will be impatient if any open disrespect is shown towards it . . . that to every true American the flag is the symbol of the nation's power—the emblem of freedom in its truest, best sense. It is not extravagant to say that to all lovers of the country it signifies government resting on the consent of the governed; liberty regulated by law; the protection of the weak against the strong; security against the exercise of arbitrary power; and absolute safety for free institutions against foreign aggression."

Our nation is now in a war of self-defense for self-preservation. Freedom of speech is not the only, nor the most important, constitutional right of the citizens of this country. The constitution provides that no law shall be passed impairing the obligation of contract; yet under the moratorium laws and Soldiers' Civil Relief Act no security contract can be enforced against one in the military service;

and lease and rental contracts between civilians in war areas are subject to approval and change by national administration officials regardless of the assent of lessors. The Constitution provides that the courts shall be open to all persons, yet under that act no legal proceeding can be prosecuted to completion, except under unheard of peace-time restriction and limitations. Under the war power acts and Inflation Emergency Price Control Acts, the entire financial and living fabric of the Nation is being woven to best aid in the prosecution of the war, regardless of individual rights. The Constitution provides that life and liberty shall not be taken without due process of law, yet under the Selective Training and Service Act the people are inducted into the military service, willingly or unwillingly, and we judicially know that the lives of many of them are being given for their country on the sands of Africa and in the jungles of New Guinea and in other foreign countries. A nation must have inherently the power to save itself. If all individual constitutional rights were maintained, the Nation could not defend itself. The rights of the citizens must give way temporarily as this may be reasonably necessary for the Nation's self-preservation.

The act has two objects: aid in prosecuting the war and dealing with local conditions arising out of the war. This is a war of all the people—not those in the military service alone. The spirit and morale of the people; their willingness to help financially by personal effort; their support of, belief in, and respect for the government are essential to its successful prosecution. The legislature knew the local conditions—that we have two races about equal in numbers in this state, and that under the stress of the times agitation and subversive influence should not be abroad among the people. The Legislature is the judge of conditions justifying such legislation unless it is clearly apparent to the Court that the assumption is unfounded. *State v. Sinchuk*, supra. This is not the usual political discussion, with a view,

by commendation or criticism, to aid or better the government and its administration. "Words are not only the keys of persuasion, but the triggers of action, and those which have no purport but to counsel the violation of law cannot by any latitude of interpretation be a part of that public opinion which is the final source of government in a democratic state." *Masses Pub. Co. v. Patten*, (D. C. S. D. N. Y.) 244 Fed. 535. Appellant and his co-workers are going about the country and into the homes of the people, of low and high degrees of intelligence, and all races, advocating disobedience to all laws and disrespect for and disloyalty to all governments, if perchance the particular law or the nature of the government in his opinion is not in accord with Theocracy. And this at a time when the nation is straining every nerve, muscle and sinew, and mobilizing every resource and person, to defend itself against a treacherous attack of one and the evil designs of all of its enemies. We draw a sharp line between war and peace time powers, and hold that under the conditions the Legislature had the right, under its police powers, to enact this statute, and it does not violate the right of free speech and free press of appellant.

Appellant next earnestly contends that he is deprived of freedom of worship. It is true that freedom of worship includes freedom to believe and freedom to act, the first of which is absolute, "but, in the nature of things, the second cannot be". "Conduct remains subject to regulation for the protection of society." *Cantwell v. Connecticut*, 310 U. S. 296, 84 L. Ed. 1213. But in this case the right is asserted on a false assumption. There is not conflict between the right to worship, including the teaching of such worship, and loyalty to the flag and government of one's country. The Constitution does not define religion. *Reynolds v. United States*, 98 U. S. 145, 25 L. Ed. 244. Appellant professes the religion of Christianity. Without undertaking a definition, the Christian religion, in its most important

ultimate aspect, recognizes, has faith in and worships a Divine Being or Spirit—one Father of all mankind—who has the power to and will forgive the transgressions of repentants and care for the immortal souls of the believers, and which belief brings earthly solace and comfort to and tends to induce right living in such believers. Its primary object is a haven of rest after “life’s fitful fever is over.” It is a fallacy of the rankest kind to assume that loyalty to one’s country and its flag is attributing to them any aspect of divinity or omnipotent power. Since the days of barbarism and savagery, it has been necessary that people live in organized society. Law, order, institutions, the earthly existence of the people, depend upon some organization. But these are earthly—for the protection here of mankind. They have nothing to do with divinity or immortality. Jesus himself announced that almost two thousand years ago. When the spies, seeking to entrap him, asked “Is it lawful for us to give tribute unto Caesar, or no?”, He replied “Render therefore unto Caesar the things which be Caesar’s and unto God the things which be God’s.” Luke XX: 22, 25. As was said in *Nicholls v. Lynn*, (Mass.) 7 N. E. 2d 577, 110 A. L. R. 377, “The term ‘religion’ has reference to one’s views of his relation to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to His Will. . . . With man’s relations to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and the morals of its people, are not interfered with.’ The flag salute and pledge of allegiance here in question do not in any just sense relate to religion. They are not observances which are religious in nature. They do not concern the views of any one as to his Creator. They do not touch upon his relation with his Maker. They impose no obligations as to religious worship. They are

wholly patriotic in design and purpose. . . . The pledge of allegiance to the flag . . . is an acknowledgment of sovereignty, a promise of obedience, a recognition of authority above the will of the individual, to be respected and obeyed. It has nothing to do with religion. . . . There is nothing in the salute or the pledge of allegiance which constitutes an act of idolatry, or which approaches to any religious observance."

The doctrine is preached by this appellant that the laws of the land should not be obeyed if they conflict with what the believer thinks is the law announced by Jehovah. This would sanctify the reasons for disobeying all human law, regardless of the soundness of the reasons, selecting passages here and there from the Bible, and lifting them out of their context and setting to support the belief. This would result, as in the past it has resulted, in not obeying the law against taking human life if the taker thought such taking justified (*United States v. Macintosh*, 283 U.S. 605, 75 L. Ed. 1303); in the justification of bigamy if defendant thought was right. *Davis v. Beason*, 33 L. Ed. 637. History discloses sects which, as a part of their religious tenets, advocates that there should be no marriage ties, approving promiscuous intercourse between the sexes as prompted by the passions of their members, and as part of their ritual the sacrifice of human beings. That subordinates the authority of the State to the whims of each individual. Such a doctrine is utterly destructive of human society and laws. See the old (1854) but leading case of *Donahoe v. Richards*, 38 Maine Rep. 379. As bearing upon the religious question, but not necessarily as an approval of the rules and holding therein, we cite *Jones v. City of Opelika*, 86 L. Ed. 1174; *Bowden v. City of Ft. Smith*, 86 L. Ed. 1174; *Com. v. Anderson*, (Mass.) 172 N. E. 114, 69 A. L. R. 1097; cases in note 114 A. L. R. 1452.

This statute is directed at affirmative action—action upon others.

Mention is made of the exemption from military service of conscientious objectors. The suggestion is not relevant to the point but it might be remarked that such exemption is based on a policy of Congress and not upon a constitutional right. Application for citizenship was denied applicants in the Macintosh and Reynolds case, *supra*, because the applicants were not willing to fight to preserve their country. The right of freedom of religion is not involved in this case.

Appellant says he cannot be held guilty under the proof here because it fails to show a clear and present danger of accomplishing the evils which are the objects of the statute. The Espionage Statute, as construed, does so require. Schenck and Frohwerk cases, *supra*. The state sedition acts appear not do so, as a rule. Gitlow case, *supra*. The Mississippi statute does not do that. That was not necessary to its validity. *State v. Sinchuk*, *supra*. But if the state statute did so require, we think the proof here sufficient to meet the requirement. The utterances, the circumstances and the objects are all to be considered. The utterances, oral and written together, are certainly calculated to create disloyalty to the state and national governments and reasonably tend to create an attitude of stubborn refusal to salute the flag. "If the act, (speaking of circulating a paper) its tendency and the intent with which it is done, are the same, we perceive no ground for saying that success alone warrants making the act a crime." *Schenck v. United States*, *supra*; *Goldman v. United States*, 245 U.S. 474, 477, 62 L. Ed. 419.

It is true that listners in this case who testified said this was not the result upon them; that they had a feeling of resentment against appellant. But in later days, when adversities of war may become more acute, who can say what their reactions may be? Besides, the proof is that appellant has gone about to the homes of many citizens, of different stations in life and degrees of literacy and intelligence, and of all the races existing in this state—these, or some of them, may, and no doubt have, reacted to the natural re-

sult of these spoken and written words. Again, an attitude of disloyalty and disrespect to the flag and the government is not likely to be shown immediately in some overt act evidencing such attitude. This is fruit to be produced after gradual growth and maturity from the evil seeds which have been sown.

Appellant contends the statute is not valid because it prescribes no ascertainable standard of its violation. The 1918 amendment to the Espionage Act used the expression "promote the cause of its enemies—bring the flag into disrepute—or advocate any curtailment of production in this country of any thing or things—necessary or essential to the prosecution of the war—cause disloyalty—in the military or naval forces of the United States; . . . " the various sedition statutes use such expressions as "advocate, encourage—incite—to encourage or advocate disrespect for law—"; conspiracy to intimidate any citizen in the free enjoyment of any right or privilege under the Constitution; any matter which creates or fosters opposition to organized government, or intended to bring the flag or government into contempt—these and other like expressions have been held to prescribe sufficiently the standard of conduct to meet the requirements of due process of law. *State v. Boyd*; *State v. Fox*; *State v. Sinchuk*; *Whitney v. State*, *supra*; *Burns v. United States*, 71 L. Ed. 1077; *People v. Lloyd*, *supra*. It was said in *Sproles v. Binford*, 286 U. S. 374, 76 L. Ed. 1167, "To make scientific precision a criterion of constitutional power would be to subject the State to an intolerable supervision hostile to the basic principles of our Government and wholly beyond the protection which the general clause of the 14th Amendment was intended to secure." "Disloyalty" to the state or nation, or "advocates the cause of the enemies" are expressions found in the Espionage Act and the State Sedition Statutes and those state statutes intended to aid in prosecuting the war. But it is said the adjective "stubborn" before the word "refusal" to salute, honor

or respect the flag renders the Mississippi Statute void in respect to the idea under discussion. The Standard Dictionary of the English Language defines stubborn as "inflexible in opinion or intention; unreasonably obstinate; not easily bent, set aside or overcome; perseverance; persistence." Aside from the other elements contained in the statute, it can readily be understood why the jury might conclude that what was said and done here, and the reasons behind the arguments, would reasonably cause such refusal to salute, honor or respect the flag. That is conclusively shown in the cases above cited where children of the members of this sect choose to be expelled from school rather than salute the flag. There were children present on the occasion at the home of Mrs. Joyner. Illustrations of vagueness and indefiniteness are set out in note 70, L. Ed. 322. The question is not without doubt, but we do not think this law is invalid on this ground.

The suggestion is made that the offense here prescribed, if any, is treason, and punishable only according to the provisions of Article 3, Section 3 of the Constitution of the United States, and the state has no authority to legislate thereon. In the cases where this contention has been made, it has been overruled. *State v. Hennessy*, 114 Wash. 351, 195 Pac. 211; *State v. Hastings*, 115 Wash. 19, 196 Pac. 13; *State v. Hemhelter*, 115 Wash. 208, 196 Pac. 581; *Equi v. United States*, 171 C. C. A. 649, 261 Fed. 53; *Frohwerk v. U. S.*, supra; *Wimmer v. U. S.* 264 Fed. 11; *Schoborg v. U. S.*, 264 Fed. 1, petition for certiorari denied, 253 U. S. 494, 64 L. Ed. 1029; *Berg v. Oklahoma*, 233 Pac. 497.

The contention is furthermore made that the State of Mississippi had no power to enact this statute because Congress has legislated upon the same field. It is evident that as to some objects of the statute Congress has not legislated thereon, but, even if that should be true, that would not deprive the state of the power to enact this enabling legislation. See the various cases cited above under state

sedition statutes, and especially *State v. Holm*; *State v. Gibson*; *State v. Kahn*; *Commonwealth v. Widovich*; *Gilbert v. Montana*, *supra*; *State v. Fowler*, (Mont.) 196 Pac. 992; *Halter v. Nebraska*, *supra*; *Noble State Bank v. Haskell*, 55 L. Ed. 116; also note 1918 C L. R. A. 307. In the *Holm* case, the Court, in dismissing the contention that the Espionage Act had superseded the Minnesota Statute, making it unlawful for any person to teach or advocate that any citizen of that state should not aid in the prosecution of the last World War, said "The citizens of the state are also citizens of the United States and owe a duty both to the state and to the United States. The state is a part of the nation and owes a duty to the nation to support, in full measure, the efforts of the national government to secure the safety and protect the rights of its citizens and to preserve, maintain, and enforce the sovereign rights of the nation against the public enemies, and to that end the state may require its citizens to refrain from any act which will interfere with or impede the national government in effectively prosecuting the war against such public enemies. It is the duty of all citizens of the state to aid the state in performance of its duties as a part of the nation, and the fact that such citizens are also citizens of the United States and owe a direct duty to the nation does not absolve them of their duty to the state, nor preclude the state from enforcing such duty." In *Halter v. Nebraska*, *supra*, the Supreme Court of the United States, speaking through Mr. Justice Harlan, said ". . . a state may exert its power to strengthen the bonds of the union, and therefore, to that end, may encourage patriotism and love of country among its people. When, by its legislation, the state encourages a feeling of patriotism towards the nation, it necessarily encourages a like feeling towards the state. One who loves the union will love the state in which he resides, and love both of the common country and of the state will diminish in proportion as respect for the flag is weakened . . ."

We do not pass upon whether the existence of intent in the accused to bring about the objects condemned by the statute is an essential element under the statute or whether, to be valid, the statute must so provide, for the reason that under the instructions of both the state and appellant such intent was made a prerequisite to guilt, and its existence or non-existence was a fact submitted to the jury, and it necessarily found that such intent did exist. We think under all the proof and circumstances here the jurors, as reasonable men, could have found on that question as they did find.

Appellant complains of the refusal of the court to grant him certain requested instructions. We have examined the instructions and reviewed appellant's discussion thereof, and are of the opinion the lower court correctly refused all of them except instruction number four, and that, while this instruction correctly announces theoretical law, it was not applicable to the entire case made out herein, and, in view of the many other instructions granted appellant, could not have resulted in appreciable harm to him, and it is, therefore, not reversible error.

As temporary, emergency, war legislation, we think this statute is valid, and that the conviction of appellant must be upheld.

AFFIRMED.

[January 25, 1943]

DISSENTING OPINIONS**IN THE SUPREME COURT OF MISSISSIPPI
IN BANC: No. 35143**

(Opinion rendered January 25, 1943)

R. E. TAYLOR v. THE STATE

ALEXANDER, J., dissenting.

I am constrained to believe that the equal division of opinion herein is not due to a divergence of views as to the applicable law, but rather to an application of the law. A lack of unanimity results from the relative importance attached respectively to the war effort as a temporary but sacrificial means, and to personal liberty which is its sacred end. I must confess that I see a greater danger to free speech from the controlling opinion than I can find to the war effort by the frail opinions of appellant whose inconsequence is attested by the revulsion awakened in his accusers. Nor can I detect any menace to our democratic institutions in the abstruse writings in the disseminated literature whose esoteric complexities transcend the comprehension of those who would be the likeliest to succumb to simple sophistries or who would most readily find incompatible a loyalty both to God and to country. While this literature is cast in a religious mold and propagated as a religious creed, I do not feel it necessary to invoke the right of religious freedom to justify my dissent. Literature of the type and content here exhibited has been many times held not to be hurtful to the morals or the general welfare nor seditious in character. *State v. Meredith*, 15 S. E. (2d), 678; *Donley v. City of Colorado Springs*, 40 Fed. Sup. 15; *People v. Northum*, 103 Cal. Sup. 295; *Zimmerman v. Village*

of London, 38 Fed. Sup. 582; *Oney v. City of Oklahoma*, 120 Fed. (2d) 861; *State v. Aspelin*, 203 Pac. 464.

In the dissent in *Cummings v. State*, this day decided, it was thought not inappropriate to review familiar but fundamental constitutional principles, which, because elemental, are too infrequently rehearsed.

In declaring their freedom, the founders of our republic sought to justify in their course "a decent respect to the opinions of mankind." Its continued prosperity is not to be achieved by withholding a like respect for the opinions of its own kind. The State is never called upon to indulge in mere resentment. It has no standard save the morals, peace, and safety of its people. Miss. Constn. Sec. 18. The Federal courts have no common-law jurisdiction of what is a mere slander or libel against the United States in a supposed violation of the peace and dignity of its sovereign power. *U. S. v. Hudson*, 7 Cranch. 32, 3 L. Ed. 259. *A fortiori* the state courts have not. The shore line which marks the ceaseless conflict between the tides of tyranny and the coasts of democracy suffers a fluctuating fate. There are times of high threat and seasons of ebbing power. It was but natural that there should recur periods of definite invasion and recession due to local and transitory influences. At epic intervals the tides are suddenly and effectively thrust back by the downrushing collapse of orderly democracy whose sustaining patience is undermined by the ruthless erosion of gradual and persistent encroachment, and freedom extends its frontiers in a veritable cataclysm of revolution. Only when the state has laid down its sea-wall of positive law can it say to the citizen, "Thus far shalt thou go and no further." But such bulwark is given permanent stability only when reinforced with the requirement that its limitation be marked by an actual overthrow by force or violence. *State v. Aspelin*, *supra*; *McKee v. Indiana*, 37 N. E. (2d) 940; *Bridges v. California*, 314 U. S. 252, 84 L. Ed. 149. "The danger line is reached when one strikes at the very founda-

tion of organized society by inciting rebellion in an attempt to overthrow it." *Com. v. Widovich*, 295 Pa. 311, 145 Atl. 295, *Certiorari Den.* 280 U. S. 518, 74 L. Ed. 588. "The evil itself must be 'substantial'; it must be 'serious'. And even the expression of 'legislative preferences or beliefs' cannot transform minor matters of public inconvenience or annoyance into substantial evils of sufficient weight to warrant the curtailment of liberty of expression." (Citing authority.) *Bridges v. California*, *supra*. An ultimate result envisaged by an advocate and by him however hopefully predicted or zealously espoused is too vague and indefinite to constitute that "clear and present danger" to peace, morals, and safety which justifies judicial restraint of this freedom. *Fiske v. Kansas*, 274 U. S. 380; *De Jonge v. Oregon*, 299 U. S. 353; *Stromberg v. California*, 283 U. S. 359; *Near v. Minnesota*, 283 U. S. 697; *Schenck v. U. S.*, 299 U. S. 47; *State v. Sentner*, 298 N. W. 813.

The majority opinion asserts that freedom of speech is not the most important constitutional right of the citizen. Avoiding direct dispute, it is nevertheless appropriate to consider whether it is not in fact the keystone of the arch through which our people have passed and through which prosperity is to pass in its pursuit of happiness. Of the "four freedoms" of late enunciated as essentials of the American way of life, all involve freedom of expression. Freedom from want implies freedom to voice our needs; freedom from fear assumes a freedom to cry out if need be; freedom of religion involves the freedom to hear, to think, and to teach. The freedom from fear must include freedom from any basis for fear that forces both without and within our borders may destroy or impair fundamental liberties. This is indispensable in a democracy if the other freedoms are to be vouchsafed self-expression. Historical reference confirms the observation that democracies not only are fearful for their liberties, but in no unreal sense fear liberty. The people free to choose their form of government

are left free to work out their own political "salvation in fear and trembling." But it is more important that they are free to work it out than that they must do so under fear. A citizenship which is immoderately apprehensive for its powers and their hazards is apt to define unity in terms of unanimity and to manifest its fears in an unreasoning tendency to crush divergent ideas by the sheer weight of majority power. Zeal is apt to be an outstanding attribute of the minority, while intolerance is best nurtured in a dominating majority which would better exhibit its confidence in a democratic way of life by a patriotism which includes both confidence and courage. Courts should, if necessary, borrow such courage from the one and vigilance from the other, for it is that other whose fears are enhanced by the menace of destruction, and which finds more frequent occasion to raise the banner of freedom to justify its cause and to wield its sword in its defense. Liberty is not self-executing. "The secret of liberty is courage. A certain penumbra of contingent anarchy always confronts the state but this is entirely desirable since the secret of liberty is always, in the end, the courage to resist." Laski, *Liberty in the Modern State*, p. 80. It is seen, therefore, that public policy is after all a political consensus in which the ideals and prejudices of the individual becomes pertinent data. Courts should not attempt to imprison human personality, nor immure the creatures of conscience within its own sanctuary. We find here the spectacle of a citizen, who having released from this novel bondage a few despised opinions, is judicially held as hostage for a period which could extend for ten years. We must train our anxieties, therefore, not only upon a fancied future effect of appellant's utterances, but upon the present effect of suppressing his right to speak.

This Court would display neither courage nor vigilance in refusing to mask itself against prejudices so thoroughly diffused as to become atmospheric, lest it as a defender

of constitutional liberty constitute itself an accessory to intolerance. Nor may it import into the discussion any matters save those presented by the record. In the arena of political discussion, it is more often the persecuted minorities who are the aggressors, and who as complainants seek the courts, which, as unbiased champions of their rights, must assume, if only to ignore, the irrelevant possibility that in the midst of arms the laws are apt to be silenced by an unwonted clamor and that the barbed barricades which a war hysteria erects against the following of its prescribed course will not deal less kindly with judicial vestments. "A court in the discharge of duty under our system is required to be oblivious to public clamor, partisan demands, notoriety, or personal popularity, and to interpret the law fearlessly and impartially so as to promote justice, inspire confidence, and serve the public welfare." *Wilson v. Russell*, 1 So. (2d) 569 (Fla.). "Those who won our independence had confidence in the power of free and fearless reasoning and communication of ideas to discover and spread political and economic truth. Noxious doctrines in those fields may be refuted and their evil averted by the courageous exercise of free discussion." *Thornhill v. Alabama*, 310 U. S. 88.

I approve also the language of Justice Brandeis in his concurring opinion in *Whitney v. California*, 274 U. S. 357, 375, when it was said: "Those who won our independence by revolution were not cowards. They did not fear political change. They did not exalt order at the cost of liberty. To courageous, self-reliant men with confidence in the power of free and fearless reasoning applied through the processes of popular government, no danger flowing from speech can be deemed clear and present unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion."

"Since the general civilization of mankind I believe there have been more instances of the abridgement of the free-

dom of the people by the gradual and silent encroachments of those in power than by violent and sudden usurpation." Madison, Speech in Va. Convention, June 16, 1778. Later echoes are heard in the statement by R. Y. Hayne in the debate with Webster: "There are two distinct orders of men—the lovers of freedom and the advocates of power", and in Justice Brandeis' dissent in *Olmstead v. U. S.*, 277 U. S. 438, 72 L. Ed. 944: "The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning but without understanding."

This Court, functioning under a Constitution which declares that the people can abolish their own form of government (*Miss. Constn.*, Art. 3, Sec. 6; see also *Herndon v. Lowry*, 301 U. S. 242, 81 L. Ed. 1066), must view a conflict of mere notions with complacency. It is not unreasonable to assume that the appellant as a citizen free to express opinions of right and wrong and of policy and impolicy, and even to manifest an unwarranted pessimism in rueful prophecy, could consistently be given the floor in the forum of popular discussion to charge his accusers in turn with a form of unamericanism which denies to him that freedom of opinion which is its identifying symbol. There have appeared in our press conscientious objections to the privileges accorded to conscientious objectors to combat service. In turn there has been outspoken and conscientious objections to those who would deny to the critics of those so exempted the right to calumniate them. The ramifications of this self-energizing process in their sum are after all only public opinion of which free speech is its genius. It has of late become current wisdom that there is such a thing as a damaging optimism which may be as justly denounced as a despairing pessimism. If the former does not slow the wheels of war industry it destroys their traction. Despair is apt to expend its last ounce of energy, while blind optimism is apt to withhold its first. The Constitution does not exact wisdom of the citizen but concedes his right to folly.

That opinions weaken our war effort is no test of their legal culpability. In the recent message of the President to the seventy-eighth Congress, he said: "But there has been some criticism based on guess-work and even on malicious falsification of fact. Such criticism created doubts and fears and weakens our total effort." The opinions and decisions of the President himself find daily dissent in the outspoken criticism of the columnist and of the advertiser.

No one should encourage the dissemination of views which tend to weaken the morale of our people. Yet a true report of military setbacks is apt to have this effect. It is an anomaly that the views of those whose high position is likely to assure universal acceptance may be expressed with a ruthless and uninhibited frankness. Dire predictions of defeat are accredited as symptoms of prophetic wisdom even though the revelations be themselves deplored. It is often those whose influence is accounted without consequence, and which therefore could be ignored, who are the favored victims of popular witch-burning. The fears and mockery which their teachings foment are not unwholesome symptoms of a jealous loyalty. But the standard remains within the breast of the accuser who is apt to fall into inconsistency by seeking to pillory lesser minds not because they are hostile to the nation's welfare but rather to the critic's views.

All the State's witnesses denied any reaction to these "teachings" except derision. Forecasts of national disaster are belied by a scorn which the witnesses considered not only deserved but applauded. No propaganda can successfully assault the reason of those whose avenues to conviction are mined with contempt. The language charged to have been used by appellant was feebly prophetic and marked by bizarre predictions whose conditional form divested them of that bold assertion which alone can dissuade opposition. The record here presented, reveals a consistent revulsion against them and belies in itself a fear of their acceptance. Yet our attention has been called to no case

where an expression of personal opinion, short of the advocacy of disobedience to existing law or of the violent overthrow of our government, has been the basis of a successful prosecution. Nor are we aware of any case in our State under the Act of 1942 except against members of the particular cult of which appellant is a member. Our attention has not been called to any attempt by the Post Office Department to prohibit the use of the mails to this literature nor of our Federal Bureau of Investigation to suppress this sect, whose activities, however exposed to popular disapproval, have extended back for many years.

Since disloyalty may connote language or acts which go no deeper than a disapproval or lack of sympathy with governmental policy, it lacks a reasonably definite standard of guilt. A stronger and more sinister term is found in the New Mexico statute—the word “revolution.” Yet it was there held that since it comprises both peaceful and violent means, and only the latter may constitutionally be punished, the act was void. *State v. Diamond*, 202 Pac. 988, 20 A.L.R. 1527. We must not interpose our own personal sentiments however difficult it may be to render them invisible—into a realm where compulsions must remain self-imposed.

My views have been elaborated almost to the measure of dissertation. Yet we have been confronted with an occasion where an assumption that these principles were known and read of all men would seem to have been unwarranted.

The controlling opinion would avoid the impact of the foregoing decision by designating the Act of 1942 as war emergency legislation and deducing from this circumstance altered principles for gauging its constitutionality. No loyal citizen would contest the generality that a deplorable incident of war is the derangement of social, political, and economic life and that the emergency begets a need for standards of conduct and exercise of restraints not applicable to times of peace. I see no reason, however, to justify a sacrifice of the freedom of speech by war when war is

itself justified as a price for its maintenance. I do not gainsay the propriety, even the absolute necessity, for curbing all activities or privileges which become distorted to the point of sedition or breach of existing law. It may be that often *inter arma silent leges*, but courts have never recognized that in time of war the citizen must remain silent nor conscience inarticulate.

It will be found that the cases invoked to sustain the controlling view on this point deal chiefly with acts or advocacy which violates existing law, or which undermines the discipline or efficacy of our armed forces or the functioning of our military machine. Most of them involve violations of the Espionage Act of 1917 which contained positive prohibitions against definite conduct. Yet the purpose and scope of that Act is succinctly shown in Bishop's Criminal Law (9th Ed.), Vol. 1, p. 326, where it is stated: "The purpose of the espionage act passed by Congress on June 15th, 1917, was not to suppress criticism or denunciation, truth or slander, oratory or gossip, argument or loose talk but only falsehoods wilfully put forward as true with intent to interfere with army and navy operations. Remote and secondary results not intended by the defendant, arising from a fair and truthful discussion of matters of public concern do not fall within its purview. Nor is the mere abuse of the president before a number of workingmen who are not in the military service an offense against it as it does not cause insubordination, disloyalty and a mutinous spirit in the military and naval forces." The Act of 1942 does not define disloyalty, and it must be conceded that neither "violence" nor "sabotage" is charged. There is "no advocacy of the cause of the enemies of the United States" nor is any other definite act specified in the statute charged save the dissemination of literature "which reasonably tends to create an attitude of stubborn refusal to salute . . . the flag of the United States." I have taken occasion to express my views on this phase of the case in the dissenting opinion

in *Clem Cummings v. State*, No. 35,155, this day decided.

Such acts or conduct must create a clear and present danger in that by force or violence the orderly processes of government will be subverted, or that its exercise of powers for the general welfare will be so hampered as to create an imminent menace to the morals, safety, or peace of the State. The most practical standard involves the advocacy of that which is criminal or unlawful either in the end or the means. This principle was adhered to in the *Stromberg*, *Herndon*, *Fiske*, *De Jonge*, *Sentner*, *Near*, *Schenck*, and *Bridges* cases, *supra*, in which there was outspoken advocacy of criminal syndicalism, communism, bolshevism, and other tenets universally deemed by loyal citizens as distinctly unamerican. Yet so long as the advocacy of religious principles remains in the domain of mere discussion, it cannot constitutionally be punished as sedition. It must bear fruitage in an overt, hostile, or treasonable act. *State v. Diamond*, *supra*; *Schoberg v. U. S.* 253 U. S. 494, 64 L. Ed. 1029; *Com. v. Widovich*, *supra*; *Reynolds v. U. S.*, 98 U. S. 162; *McKee v. Indiana*, *supra*; *Watson on the Constitution*, vol. 2, p. 1379; *Montesquieu*, *Spirit of Laws*, vol. 1, p. 194; *Schroeder*, *Constitutional Free Speech*, pp. 412, 438.

War is an emergency chiefly because our liberties are at stake. There is neither logic nor law to support the view that these liberties must be surrendered in order to be saved. In a classic expression in *Ex parte Milligan*, 4 Wall. 2, 18 L. Ed. 281, 295 the Court said: "The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism, but the theory of necessity on which

it is based is false; for the government, within the Constitution, has all the powers granted to it which are necessary to preserve its existence, as has been happily proved by the result of the great effort to throw off its just authority." There are in fact certain constitutional rights which are illuminated by the fierce fires of war when those required to submit to equal responsibilities are given more patient hearing as to their asserted rights. It was stated in the address of the President to the Congress, January 7, 1943: "In this war of survival we must keep before our minds not only the evil things we fight against but the good things we are fighting for. We fight to retain a great past and we fight to gain a greater future." To use the phrases of war itself, liberty may not be rationed. Nor is it expendable.

The opportunity should not be waived to call attention to other significant requirements of the statute in order that they may receive an emphasis comparable to those parts stressed to sustain conviction. The statute requires that the distribution of literature and the advocacy by speech should be done not only 'intentionally' but the acts or words must be 'designed and calculated' to encourage violence, sabotage or disloyalty. In passing it is well to dispel a popular notion that the law can compel loyalty; it can only punish speech or acts which operate to or are intended and calculated to produce definite and prohibited acts. "Offenses against the espionage act are in the nature of attempts or efforts with specific intent to commit specific crimes which efforts fail though they are apparently adapted to accomplish the crime are of sufficient magnitude and proximity to the object of their operation to be reasonably calculated to excite public fear and alarm." Bishop's Criminal Law, p. 327.

War does not restrict fundamental freedoms but rather enlarges the legislative field by bringing into play new laws designed to preserve the integrity of the war effort and to protect the functioning of our army and navy. But in the

end the principle remains the same. Mere opinions even though beneath contempt are nevertheless above the law.

The controlling opinion, while willing to construe the language as subversive, finds its menace in its aspect as a forbidding symbol. Of what it is a symbol must be addressed to the suspicion or prescience of the individual judge. At its worst it could be symbolic only of underlying motives or subtle purposes, which, if true, means only opinions and not acts. Criminal laws never punish mere mental traits, nor even criminal intent alone. The virtual internment of appellant on such grounds would be tantamount to an arrest on suspicion, or an imprisonment in default of bond to keep the peace.

Were symbols important and relevant, apt example could be found in the fact that while the fate of the appellant is being considered our Government has adopted a new design for its postage stamps, honoring the 'Four Freedoms', thereby symbolizing that it respects and protects the private opinions of the writer's message not only, but also blazons to the world its own defiant stand for a freedom of speech whereby the author can, if he so desire, shout his opinion from his own housetop.

The maxim, *Salus reipublicae suprema lex est*, is a slogan both of peace and of war. But it is not the safety of the people but of their liberties which is the supreme goal. It is in war especially that our people have heroically proved that liberty is of more value than life. It is only the traitor who purchases life at the cost of a people's liberty.

This Court should say nothing that would encourage expressions of the type here involved. Yet I do not think that the emergency is such that even those deemed Philistines by their accusers should be destroyed by crushing both them and our liberty amid the wreckage of its own temple.

Anderson, J., and Smith, C. J., concur in this opinion.

IN THE SUPREME COURT OF MISSISSIPPI
IN BANC:

No. 35143

(Opinion rendered January 25, 1943)

R. E. TAYLOR *v.* THE STATE

SMITH, C. J., dissenting.

The indictment in this case contains only one count and charges the appellant with violating not the whole of Chapter 178, Laws of 1942, but with violating the "disloyalty" and the "respect for the flag" provisions thereof, two distinct crimes which should have been charged in separate counts, but no objection has been made thereto by the appellant. The punishment prescribed by this statute is "imprisonment in the state penitentiary until treaty of peace be declared by the United States, but such imprisonment shall not exceed ten years"; and this appellant was sentenced accordingly. I will put aside this indeterminate sentence provision of the statute which in effect is but a variation of concentration camp confinement for the duration of the war, and will express no opinion thereon.

I concur in all that Judge Alexander has said, but it may not be amiss for me to specifically set forth two of the reasons why I think the disloyalty provision of this statute is constitutionally invalid. 1. As Judge Alexander has pointed out, a sufficiently ascertainable standard of "guilt" can not be found in the word "disloyalty" to satisfy the requirements of due process of law. 2. As my affirming associates admit, for the statute to be constitutionally valid it must be within—must not exceed—the state's war power. This power exists only when the nation is at war and is to enact legislation in aid of the prosecution of the war or to prevent the obstruction of its successful prosecution. Article I, Section

8, Clause 11, and Section 10 of our National Constitution. *Gilbert v. Minn.*, 245 U. S. 325, 65 L. Ed. 287, 16 C. J. S. p. 631. The disloyalty to the State or Nation condemned in this statute is not limited therein to such as may adversely affect the prosecution of this war but covers all such disloyalty whether it affects the prosecution of the war or not, and therefore is in excess of the State's war power.

I cannot close this opinion without saying that I am at a loss to perceive how the successful prosecution of the war in which we are now engaged can be so obstructed by such things as this appellant here said and did as to justify depriving our people of the blessing of the freedom they have enjoyed since our national constitution was adopted to believe, write and say what they pleased as to the policies and conduct of their state and national governments. I may not, and do not, believe what this appellant is teaching and I unhesitatingly say that until we have won this war he should refrain therefrom, but nevertheless he had the constitutional right to say and do what he here said and did. It would be well for us to pause in our prosecutions of the members of this misguided but war harmless sect (Jehovah's witnesses) and ponder the wise words of Madariaga, quoted by the late Lord Tweedmuir in "Pilgrim's Way", page 222: "A democracy that goes to war, if beaten, loses its liberty at the hands of its adversary; if victorious it loses its liberty at its own hands", and be warned thereby that if we are not to lose our liberty in winning this war, we must be careful to sacrifice it for the time being only to the extent necessary to enable us to fight the war.

Alexander and Anderson, JJ., concur in this opinion.

IN THE SUPREME COURT OF MISSISSIPPI
IN BANC:

No. 35143

(Opinion rendered January 25, 1943)

R. E. TAYLOR *v.* STATE OF MISSISSIPPI

ANDERSON, J., dissenting:

I join with Judges Smith and Alexander in their dissents in the Jehovah's witnesses cases. I feel constrained, however, to add the following to the views they have expressed:

The statute involved, Chapter 178, Laws of 1942, page 211, is directed at treason against both the State and the United States. The title itself so states. There is involved here, however, only prosecution for treason against the State. The fourth paragraph of the preamble to the statute is in this language: "Whereas, All persons who either by word or deed weaken the morale or unity of our people, or adversely affect their honor and respect for the flag or government of these United States or of the State of Mississippi are a menace to the safety of this [state] and these United States." Section 1 of the enacting provision follows: "Section 1. BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI, That any person who individually, or as a member of any organization, association, or otherwise, shall intentionally preach, teach, or disseminate any teachings, creed, theory, or set of alleged principles, orally, or by means of a phonograph or other contrivance of any kind or nature, or by any other means or method, or by the distribution of any sort of literature, or written or printed matter, designed and calculated to encourage violence, sabotage, or disloyalty to the government of the United States, or the State of Mississippi, or who by

action or speech, advocates the cause of the enemies of the United States or who gives information as to the military operations, or plans of defense or military secrets of the nation or this state, by speech, letter, map or picture which would incite any sort of racial distrust, disorder, prejudices or hatreds, or which reasonably tends to create any attitude of stubborn refusal to salute, honor or respect the flag or government of the United States, or of the State of Mississippi, shall be guilty of a felony and punished by imprisonment in the state penitentiary until treaty of peace be declared by the United States, but such imprisonment shall not exceed ten years."

The Constitution of the State, Section 10, defines treason against the State and the evidence necessary to convict of the crimes in this language: "Treason against the state shall consist only in levying war against the same or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court." That is exactly the same language used in Article 3, Section 3 of the Constitution of the United States except the words "United States" in place of the words "the state". Insurrection, sedition, sabotage and syndicalism are merely elements which go to make up treason. 33 C. J. Page 159, Sections 4, 12, 13 and 14. When the proposition is squarely presented to the Supreme Court of the United States my opinion is that Court should and will hold that the constitutional definition of treason can neither be added to or taken from by legislation; that the constitutional definition is complete and exclusive. The early lower federal court decisions so held without exception. See *U. S. v. Burr*, (C. C. Va. 1807), 4 Cranch (Appendix) 455, 25 Fed. Cas. No. 14692a. In that case the court said, "The people have refused to trust the national legislature with the definition of the crime of treason". *U. S. v. Greathouse* (C. C. Cal 1863) 4 Sawy. 457, 26 Fed. Cas. No. 15254; *U. S. v. Werner*

(D. C. Pa. 1918) 247 Fed. 708. A mere conspiracy to overthrow the Government, however atrocious, does not of itself constitute treason. "The intention and the act, the will and the deed, must concur." *U. S. v. Mitchell* (C. C. Pa. 1795), 2 Dall. 348, 1 Law Ed. 410, 26 Fed. Cas. No. 15788. *U. S. v. Fricke* (D. C.N. Y. 1919), 259 Fed. 673. Mere words, oral, written or printed, however treasonable, do not constitute an overt act of treason within the definition of the crime. 5 Blatchf. 549, 30 Fed. Cas. No. 18271. 1 Bond 609, 30 Fed. Cas. No. 18272. War can only be levied by the employment of actual force. "Troops must be employed, men must be assembled, in order to levy war." *U. S. v. Burr*, *supra*. (These cases digested in *U. S. C. A.*, Title 18, pages 5-8, inclusive.)

Under Article 5 of the Constitution of the United States, that instrument can be amended, changed or repealed in its entirety, and another Constitution adopted, provided the proposal is properly made and ratified by the Legislatures of three fourths of the United States. In other words, the Federal Government is given power, to be exercised in the manner provided by that article, to legally repeal the Constitution in whole or in part, and if repealed in whole, adopt another of any kind or character whatsoever. In other words, our Democracy could legally "commit suicide." It could adopt a dictatorship in its place. This could not, however, be brought about by force of arms. The change would have to be by peaceful means. But it would be permissible for private individuals, public assemblages and public press and otherwise to advocate the change. Provided, of course, the limit would be treason against the Government, as defined by the Constitution.

It is true that the constitutional war powers of the Congress, as provided in paragraphs 1-16, inclusive, of Article 8, are large. And in order to successfully conduct a war many constitutional provisions may be ignored, but not all of them. The freedom of speech, freedom of religion, and freedom of the press, the three most outstanding constitu-

tional rights, are not entirely wiped out for the purposes of war. Suppose Congress should declare that the doctrines of a certain religious organization are hampering the country's war efforts and make it a crime to further advocate them. Would the members of the society have to lay aside and repudiate their religion during the war? Suppose Congress should declare that neither by word of mouth nor by means of the public press the conduct of the war should be criticized, and make it a crime so to do. In my opinion those three fundamentals cannot be abridged to any extent in time of peace, and very little, if any, in time of war. In the past the attempt to destroy any religious sect has resulted in its permanent establishment and growth. Take, for illustration, the Mormon religion,—the founder, Smith, was assassinated on account of his religion. The members, to a large extent, were driven out of the east into the new west; and now in the state of Utah it is the outstanding religion of that State, with many times more members than any other religious organization.

What has been written above applies as well to the case of *Clem Cummings v. State*, this date decided.

Judgment

IN THE SUPREME COURT OF MISSISSIPPI

MONDAY MORNING, JANUARY 25th, 1943

MINUTE BOOK BH—PAGE 89

R. E. Taylor
35143 vs.
State

This cause having been submitted at a former day of this term on the record herein from the Circuit Court of Madison County and this court having sufficiently examined and considered the same and being of the opinion that there is no error therein doth order and adjudge that the judgment of said Circuit Court rendered in this cause at the June 1942 Term—a conviction under Chapter 178, General Laws of Mississippi 1942 and a sentence to the State Penitentiary for the duration of the war or not to exceed 10 years—be and the same is hereby affirmed. It is further ordered and adjudged that the County of Madison do pay the costs of this appeal to be taxed, etc.

Assignment of Errors

MISSISSIPPI SUPREME COURT

No. 35143

STATE OF MISSISSIPPI *v.*

R. E. TAYLOR, *Appellant*

Now comes appellant and assigns the following as error in the lower court, to wit:

ONE

The court erred in refusing and overruling appellant's motion to quash the indictment duly and timely filed with the clerk and presented to the court in the manner required by law. Each ground of said motion is made a part of this assignment of error. Said motion appears in the typewritten record and is incorporated herein and made a part hereof as though written at length herein.

TWO

The court erred in refusing and overruling appellant's demurrer to the indictment duly and timely filed with the clerk and presented to the court in the manner required by law. Each ground of said demurrer is made a part of this assignment of errors. Said demurrer appears in the typewritten record and is incorporated herein and made a part hereof as though written at length herein.

THREE

The court erred in refusing and overruling appellant's motion for peremptory instruction requesting the trial court to exclude the evidence of the State and instruct the jury to return a verdict for appellant, which motion was duly and timely filed with the clerk at the close of State's evidence and presented to the court in the manner required by law. Each ground of said motion for peremptory instruc-

tion is made a part of this assignment of errors. Said motion appears in the typewritten record and in this court is incorporated herein and made a part hereof as though written at length herein.

FOUR

The court erred in refusing and overruling appellant's motion for a directed verdict requesting the trial court to exclude all the evidence and instruct the jury to return a verdict for appellant, which motion was duly and timely filed with the clerk at the close of all the evidence and presented to the court in the manner required by law. The motion for directed verdict reads, omitting formal parts, as follows:

Now comes the above named defendant, R. E. Taylor, in the above entitled and numbered cause and files this his MOTION FOR DIRECTED VERDICT, and as grounds therefor says:

ONE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is void on its face and unconstitutional because Section 1 thereof deprives the citizens and residents of Mississippi, and particularly this defendant, of their rights of freedom to worship Almighty God according to the dictates of conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi, the First Amendment of the United States Constitution, and Section 1 of the Fourteenth Amendment to the United States Constitution.

TWO

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative

Session 1942, is unconstitutional as construed and applied to the activity of this defendant because Section 1 thereof deprives this defendant of his inherent rights of freedom to worship Almighty God according to the dictates of conscience, freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi, and the First Amendment and Section 1 of the Fourteenth Amendment to the United States Constitution.

THREE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 1 thereof is unreasonable and in excess of the police powers of the State of Mississippi, thereby permitting the denial of liberty without due process of law, contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

FOUR

The statute under which the indictment is drawn known as House Bill 689, of the Regular Legislative Session 1942, is unconstitutional because Section 1 thereof is vague, too general, indefinite, and permits speculation on the part of the jury and court trying the cause, thus constituting a dragnet, both on its face and as construed and applied, all contrary to Section 14 of Article 3 of the Mississippi Constitution and Section 1 of the Fourteenth Amendment to the United States Constitution.

FIVE

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because Section 2

thereof is unreasonable and in excess of the police power of the state, and is vague, indefinite and a drag-net, in violation of Section 1 of the Fourteenth Amendment to the United States Constitution.

SIX

The statute under which the indictment is drawn, known as House Bill 689 of the Regular Legislative Session 1942, is unconstitutional because the entire statute denies equal protection of the laws and discriminates between classes contrary to Section 1 of the Fourteenth Amendment to the United States Constitution.

SEVEN

The indictment fails to allege any facts or circumstances showing the commission of any public offense or the violation of any law of the State of Mississippi.

EIGHT

The State has wholly failed to offer any evidence whatsoever as to the defendant's guilt, and the undisputable evidence shows that the defendant is not guilty of violating any law of the State of Mississippi, and is not guilty of the act charged in the indictment.

WHEREFORE defendant prays that upon consideration hereof the Court instruct the jury to acquit the defendant and by their verdict say, "We the jury find the defendant not guilty," and render a judgment dismissing the indictment and discharging the defendant with his costs, and defendant prays for such other and further relief as he may show himself justly entitled to.

FIVE

The verdict of the jury is contrary to law.

SIX

The verdict of the jury is not supported by any evidence.

SEVEN

The judgment of the court is contrary to the law and the evidence.

EIGHT

The undisputed evidence shows that appellant is not guilty.

NINE

The statute in question is unconstitutional on its face because, by its terms, it denies and deprives persons in Mississippi of their rights of freedom of press and freedom of speech, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi and Amendments 1 and 14 to the United States Constitution.

TEN

The statute in question as construed and applied to the facts and circumstances is unconstitutional and denies appellant his rights of freedom of conscience, of press, of speech and of worship of Almighty God, contrary to Sections 13, 14, 18 and 32 of the Constitution of the State of Mississippi and Amendments 1 and 14 to the United States Constitution.

ELEVEN

The statute in question, both on its face and as construed and applied, violates the *due process* and the *equal protection* clauses of the Fourteenth Amendment to the United States Constitution, and is contrary to Section 14 of Article 3 of the Mississippi Constitution, because it is vague, indefinite, uncertain, too general, does not furnish a sufficiently ascertainable standard of guilt, enables the court and jury trying the indictment to speculate, permits arbitrary and discriminatory action and amounts to a dragnet, thus de-

priving appellant of his liberty without equal protection and due process of law.

T W E L V E

The statute in question is in excess of the police power of the State because it unlawfully invades the realm of legislation impliedly delegated to the Federal Government. The statute is superseded by federal legislation pertaining to the United States flag, the present national emergency and the war now being waged between the Axis powers and the United States Government, and therefore duplicates federal legislation and encroaches upon federal powers, and thus deprives appellant of his rights in violation of the United States Constitution.

T H I R T E E N

Appellaat hereby reserves the right to amend the assignments of error, incorporating and including additional errors reflected in the record at a time before the term begins at which this case will be argued.

F O U R T E E N

The State wholly failed to offer any evidence to show guilt on the part of appellant, since the undisputed evidence showed that appellant was not guilty of the acts charged in the indictment. The States wholly failed to show that the literature distributed by appellant was calculated to encourage disloyalty to the Government, caused racial distrust, disorder, prejudice or hatreds, or reasonably tended to create an attitude of refusal to salute the flag.

F I F T E E N

The trial court committed reversible error in refusing to give appellant's requested instruction NUMBER ONE, reading as follows:

"You are instructed that there is no statute or law of the State of Mississippi which requires an adult

person not in attendance at the public schools to perform the salute to the American flag or any flag, and in arriving at your verdict you cannot consider the fact that the defendant refused to salute or now refuses to salute the American flag."

SIXTEEN

The trial court committed reversible error in refusing to give appellant's requested instruction NUMBER TWO, reading as follows:

"You are instructed that words spoken or printed must be more than a theoretical discussion, and before such can be made the basis of a conviction, you must find from the evidence beyond a reasonable doubt that such words are of such a nature as to create a clear, immediate and present danger that they will bring about the overthrow by force and violence of the Constitution, laws and government of the State of Mississippi and the United States, which you must find from the evidence beyond a reasonable doubt to be a clear, immediate and present danger. If you fail so to find or have a reasonable doubt thereof, defendant is entitled to an acquittal."

SEVENTEEN

The trial court committed reversible error in refusing to give appellant's requested instruction NUMBER FOUR, reading as follows:

"You are instructed that the defendant has a legal right to print, sell, publish, circulate and otherwise distribute literature which attacks any religious principle, dogma, or doctrine, or any political belief, dogma, or doctrine, and to persuade others to that point of view the defendant may resort to exaggeration, to vilification of men who have been or are prominent or low in church and state, and even may resort to false

statements for this purpose, because the people through the Constitution have ordained in the light of history, that in spite of excesses and abuses this liberty is essential to enlightened opinion and democracy, and if there is any evidence of such you will not consider it in arriving at your verdict."

E I G H T E E N

The trial court committed reversible error in refusing to give appellant's requested instruction NUMBER SIX, reading as follows:

"You are instructed that according to Section 6 of Article 3 of the Constitution of the State of Mississippi the people of this State have the inherent right to alter and abolish their form of government whenever they deem it necessary to their safety and happiness, and every person has the right to advocate a change in the form of government provided that he does not advocate the overthrow thereof by force and violence; and if you find or believe from the evidence, or have a reasonable doubt, that the defendant advocated the establishment in due time of God's Kingdom described by the defendant as Jehovah's Theocracy, as foretold in the Bible, and if you find and believe from the evidence, or have a reasonable doubt, that the defendant in advocating the establishment of such Theocracy does not urge a change in the present form of government by force and violence, you will acquit the defendant and by your verdict say: 'We the jury find the defendant not guilty.'"

N I N E T E E N

The trial court committed reversible error in refusing to give appellant's requested instruction NUMBER NINE, reading as follows:

"You are instructed that according to the case of

Ex parte Milligan, decided by the Supreme Court of the United States during the Civil War, reported in 4 Wall. 2, 'The Constitution of the United States is a law for *rulers* and people equally in war and peace; it covers with the shield of its protection all classes of men at all times and under all circumstances. No doctrine involving more pernicious consequences was ever invented by the mind of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy and despotism. But the theory of necessity on which it is based is false for the government within the Constitution has all the powers granted to it which are necessary to preserve its existence.'

T W E N T Y

The trial court committed reversible error in refusing to give appellant's requested instruction NUMBER ELEVEN, reading as follows:

"You are instructed that the defendant has the right to worship Almighty God according to the dictates of the heart, to adopt and to hold any opinion whatsoever on the subject of the Bible, and to do any act such as to distribute the literature in question, or to forbear to do any act such as to refuse to salute the flag of the United States, the doing or the forbearing of which does not seriously and immediately endanger the public morals, health and safety."

T W E N T Y - O N E

The trial court committed reversible error in refusing to give appellant's requested instruction NUMBER FIFTEEN, reading as follows:

"Freedom of speech and freedom of the press are guaranteed and protected by the Constitution of Mis-

Mississippi and of the United States, and this liberty is not confined to newspapers but necessarily embraces pamphlets and leaflets pertaining to matters of government and the Bible. If you find and believe from the evidence or have a reasonable doubt that defendant was engaged in activity of 'free press' and 'free speech' you will acquit the defendant and you by your verdict will say: 'We the jury find the defendant not guilty.'"

T W E N T Y - T W O

The trial court committed reversible error in refusing to give appellant's requested instruction NUMBER EIGHTEEN, reading as follows:

"The court instructs the jury for the defendant that it takes 12 jurors to bring in a verdict of 'Guilty', and if any one of the jurors disagrees as to guilt of the defendant, then the form of the verdict should be, 'We, the jury, cannot agree.'"

T W E N T Y - T H R E E

The trial court committed reversible error in overruling the motion for new trial because the verdict was contrary to overwhelming weight of the evidence.

GROVER C. CLARK

HAYDEN C. COVINGTON

Attorneys for Appellant

Docket Entries

GENERAL DOCKET C-C, Supreme Court of Mississippi
Docket Entries:

Case No. 35143 R. E. Taylor *vs* State

Circuit Court, Madison County

Certificate filed 7/4/42

Record & P. O. filed 9/18/42

Assignment of Errors: G. C. Clark, G. C. Powell,

Hayden C. Covington—9/7/42

Carbon copy Assignment of Errors: G. C. Clark, G. C. Powell, Hayden Covington—9/7/42

6 Exhibits—Booklets—9/18/42

2 Exhibits—Yellow Cards—9/18/42

Brief of Appellee—Geo. H. Ethridge—10/16/42

2 Carbons Brief of Appellee—Geo. H. Ethridge—10/16/42

Petition for Writ of Certiorari—Hayden Covington—10/17/42

Carbon Petition for Writ of Certiorari—Hayden Covington—10/17/42

Answer to Petition for Writ of Certiorari—Geo. H. Ethridge—10/19/42

Petition for Writ Withdrawn—Hayden Covington—10/23/42

Amended Assignment Errors—Hayden Covington—10/24/42

Second Amended Assignment Errors—Hayden Covington—10/24/42

6 Briefs of Appellant—Hayden Covington—6/24/42

6 Books—"Children"—Hayden Covington—10/24/42

Argued and Submitted 10/26/42 BH 48B

Notified G. C. Clark, Hayden Covington & Sheriff, Madison County fixing Jan. 25 for Judgment—1/19/43

Jan. 25, 1943 is set for appellant to appear 1/18/43 BH 86 In Banc

Affirmed 1/25/43 In Banc BH 89

Petition for 90 days stay, pending appeal—G. C. Clark, H. C. Covington—2/1/43

Carbon Petition for 90 days stay, pending appeal—G. C. Clark, H. C. Covington—2/1/43

Bond for appeal to U. S. Court 2/2/43

Order Staying Judgment—2/2/43

[Same Caption Omitted in Printing]

**Petition for Appeal, Statement,
Assignments of Error and
Prayer for Reversal**

Petition for Appeal

Being aggrieved by the final decision of the Supreme Court of the State of Mississippi, and the judgments of the courts below, in the above entitled cause, the appellant herein hereby prays that an appeal be allowed to the Supreme Court of the United States herein, and for an order fixing the amount of the bond thereon.

Statement

This case is one in which is challenged the validity of a statute of the State of Mississippi, known as Chapter 178, General Laws of Mississippi, which, when stripped of its preamble and sections 2, 3, 4, 5, 6 and 7, which are not involved, reads:

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi*, That any person who individually, or as a member of any organization, association, or otherwise, shall intentionally preach, teach, or disseminate any teachings, creed, theory, or set of alleged principles, orally, or by means of a phonograph or other contrivance of any kind or nature, or by any other means or method, or by the distribution of any sort of literature, or written or printed matter, designed and calculated to encourage violence, sabotage, or disloyalty to the government of the United States, or the State of Mississippi, or who by action or speech, advocates the cause of the enemies of the United States

or who gives information as to the military operations, or plants of defense or military secrets of the nation or this State, by speech, letter, map or picture which would incite any sort of racial distrust, disorder, prejudices or hatreds, or which reasonably tends to create an attitude of stubborn refusal to salute, honor or respect the flag or government of the United States, or of the state of Mississippi, shall be guilty of a felony and punished by imprisonment in the state penitentiary until treaty of peace be declared by the United States but such imprisonment shall not exceed ten years."

This statute was duly passed and approved by the Legislature of the State of Mississippi and is here drawn in question upon the ground that said statute is repugnant to the First and Fourteenth Amendments to the United States Constitution. The Supreme Court of the State of Mississippi is the court of last resort in this cause in the State of Mississippi in which a decision could be had and the decision of that court is in favor of the validity of said statute.

Therefore, in accordance with the rules of the Supreme Court of the United States (Rule 46, paragraph 2 [28 U.S.C. sec. 354]), appellant respectfully shows this Court that the case is one in which under the legislation in force when the Act of January 31, 1928 (45 Stat. L. 54) was passed, to wit, under Section 237 (a) of the Judicial Code (28 U.S.C., sec. 344), a review could be had in the Supreme Court of the United States on a writ of error as a matter of right.

The Supreme Court of the State of Mississippi, court of last resort in this cause in the State of Mississippi, rendered its decision herein on the 25th day of January, 1943, which became final on January 25, 1943, and by its said decision affirmed the judgment of the Circuit Court in said cause. The opinion of said Supreme Court of the State of Mississippi has not yet been officially reported but

is of record unofficially: *Taylor v. State of Mississippi*, 11 So. 2d 663. That opinion appears in the record at page 140, and will appear at 194 Miss. . . .

The order and judgment of affirmance by said Supreme Court of the State of Mississippi entered in the office of the Clerk of the said Court on January 25, 1943, became a final judgment on the same day, the date when the opinions were filed in said cause.

Assignments of Error

Now comes appellant in the above cause and files herewith, together with said petition for appeal, these assignments of error, and says that there are errors committed by the courts below in the record and proceedings of the above entitled cause, and for the purpose of having the same reviewed in the United States Supreme Court, makes the following assignments:

FIRST: The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's motion to quash the indictment.

SECOND: The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's demurrer to the indictment.

THIRD: The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's motion for a directed verdict filed at the close of the State's evidence.

FOURTH: The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's motion for an instructed verdict filed at the close of all the evidence.

FIFTH: The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the court should have sustained appellant's motion for a new trial duly and timely filed.

SIXTH: The Supreme Court of Mississippi erred in failing to hold that the statute in question is unconstitutional on its face because, by its terms, it abridges appellant's rights of freedom of press and of speech contrary to the First and Fourteenth Amendments to the United States Constitution.

SEVENTH: The Supreme Court of Mississippi erred in failing to hold that as construed and applied to the particular facts and circumstances of the case the statute in question is unconstitutional because as so construed and applied it abridges appellant's rights of freedom to worship ALMIGHTY GOD JEHOVAH, freedom of press and of speech contrary to the First and Fourteenth Amendments to the United States Constitution.

EIGHTH: The Supreme Court of Mississippi erred in failing to hold that on its face and as construed and applied the statute violates the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution because it is vague, indefinite, uncertain, too general, fails to furnish a sufficiently ascertainable standard of guilt, and enables the court and jury to speculate, and amounts to a dragnet so as to deprive appellants of liberty without equal protection and due process of law.

NINTH: The Supreme Court of Mississippi erred in failing to hold that there was no evidence that there existed a clear and present danger that the evils prohibited by the statute would result from the literature distributed by appellant or the words and conduct of appellant.

TENTH: The Supreme Court of Mississippi erred in failing to hold that the trial court committed error in refusing to give appellant's special requested instruction number 4.

ELEVENTH: The Supreme Court of Mississippi erred in failing to hold that the trial court committed error in refusing to give appellant's special requested instruction number 9.

Prayer for Reversal

For and on account of the above errors appellant prays that the said judgment of the Supreme Court of the State of Mississippi hereinabove described in the above entitled cause be reviewed by the Supreme Court of the United States and reversed, and a judgment rendered in favor of the appellant and for costs.

G. C. CLARK
HAYDEN C. COVINGTON
Attorneys for Appellant

[Same Caption Omitted in Printing]

Order Allowing Appeal

Appellant in the above entitled suit and cause has prayed for allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered by the Supreme Court of the State of Mississippi on the 25th day of January, 1943, affirming the judgment of the Circuit Court in said cause there titled, to wit, R. E. Taylor, appellant v. State of Mississippi, appellee.

It appearing that the appellant in the assignments of error and in said cause before argument attacked the

statute in question on the grounds, as contended by appellant, that it unreasonably abridges freedom to worship ALMIGHTY GOD, freedom of conscience, of speech, of press, and that it is void because of vagueness, and in conflict with federal legislation on the same subject, and because there was not evidence to sustain the conviction, all of which contentions were overruled by decision and judgment of the said Supreme Court of the State of Mississippi previously rendered herein.

It appearing that appellant has presented and filed a petition for appeal to the Supreme Court of the United States, a statement, assignments of error and prayer for reversal and jurisdictional statement, all within three (3) months from date that said judgment of the Supreme Court of the State of Mississippi became final on January 25, 1943, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided,

IT IS NOW HERE ORDERED that an appeal be and the same is hereby allowed to the Supreme Court of the United States from the judgment of the Supreme Court of the State of Mississippi, and the said judgment of the Circuit Court, in aforesaid cause as provided by law, and,

IT IS FURTHER ORDERED that the Clerk of the Supreme Court of the State of Mississippi shall prepare and certify to the printed transcript of the record, proceedings and judgment in the said cause and transmit the same to the Supreme Court of the United States together with all exhibits in the original form, so that he shall have the same in said Court within twenty (20) days from date.

AND IT IS FURTHER ORDERED that security for costs on appeal be fixed in the sum of Two Hundred and Fifty (\$250.00) Dollars and appellant having heretofore presented and filed an undertaking in the sum of One Thousand (\$1000.00) Dollars executed by the National Surety Corporation, which provides for the appearance of the appellant to abide by the judgment of this court and

also to cover the costs of appeal to the United States Supreme Court which has been approved by the court, it is ordered that no additional bond to cover costs be required.

Dated, March , 1943.

SIDNEY SMITH

Chief Justice of the
Supreme Court of the
State of Mississippi

[Same Caption Omitted in Printing]

Citation

To THE STATE OF MISSISSIPPI and

Its Counsel of Record in the above-entitled cause,
and

To The Attorney General of the State of Mississippi
Greeting

You are hereby cited and admonished to appear at a Supreme Court of the United States, at Washington, in the District of Columbia, within twenty (20) days from the date hereof, pursuant to an appeal, filed in the Clerk's office of the Supreme Court of the State of Mississippi, where R. E. Taylor is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against said appellant as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable Sidney Smith, Chief Justice of the Supreme Court of the State of Mississippi, this .. day of March, in the year of our Lord one thousand nine hundred and forty-three.

SIDNEY SMITH

Chief Justice of the
Supreme Court of the
State of Mississippi

Bond

[Filed 2/2/43 Tom Q. Ellis, Clerk]
IN THE SUPREME COURT OF MISSISSIPPI
No. 35143

R. E. TAYLOR, appellant, v. STATE OF MISSISSIPPI.

**APPEARANCE and COST BOND ON APPEAL
to UNITED STATES SUPREME COURT**

WHEREAS, on the 25th day of January, 1943, an Opinion was filed by this Court in the above captioned and numbered case, affirming the judgment and sentence of the Circuit Court of Madison County of June 30, 1942, which judgment was adverse to the Appellant;

WHEREAS, appellant, R. E. Taylor, being dissatisfied with said judgment, desires and intends to file an appeal in said matter to the Supreme Court of the United States;

WHEREAS, it is estimated that the costs of Circuit Court, Supreme Court of Mississippi and Supreme Court of the United States will not exceed the sum of \$250.00;

WHEREAS, by Order of Court a bond in the amount of (\$1000.00) Dollars was fixed by the Court to act as an appearance appeal bond and cost bond on appeal to the United States Supreme Court, to be executed and filed by the appellant;

NOW, THEREFORE, Know All Men by These Presents, That we, R. E. Taylor, as principal, and the undersigned as sureties, do hereby acknowledge ourselves, our heirs, our executors and successors firmly bound unto the State of Mississippi in the sum of

(\$1000.00) Dollars. The condition of the bond is such that if the appellant, R. E. Taylor, shall prosecute his appeal with effect to the United States Supreme Court and appear before this Court upon the return of the mandate from the United States Supreme Court and abide by the

judgment to be entered and pay all costs incurred in the United States Supreme Court by reason of said appeal that such bond and obligation here incurred shall become null and void; however, if the said R. E. Taylor shall not prosecute his appeal with effect and if he fails to appear before this Court and abide by the judgment entered against him the said bond and obligation shall remain in full force and effect.

WITNESS our hands and the seal of the surety corporation on this the 2nd day of Feb. 1943.

(Sgd) Ralph E. Taylor
R. E. TAYLOR, Principal

NATIONAL SURETY CORPORATION
[Seal]
By (Sgd) F. Wallace

Its Attorney in Fact As Surety

(Sgd) G. C. Clark
Witness

(Sgd) C. A. Rawls
Witness

Approved and ordered filed
on this the 2d day of Feb. 1943

(Sgd) Sydney Smith
Chief Justice of the
Supreme Court of Mississippi

[Same Caption Omitted in Printing]

Statement of Points to Be Relied Upon

Comes now appellant in the above-entitled cause and states that the points upon which he intends to rely in this Court in this cause as follows:

Point 1. The Supreme Court of the United States should hold that the statute in question is unconstitutional on its face because, by its terms, it abridges appellant's rights of freedom of press and of speech contrary to the First and Fourteenth Amendments to the United States Constitution.

Point 2. The Supreme Court of the United States should hold that as construed and applied to the particular facts and circumstances of the case the statute in question is unconstitutional because as so construed and applied it abridges appellant's rights of freedom to worship ALMIGHTY GOD JEHOVAH, freedom of press and of speech contrary to the First and Fourteenth Amendments to the United States Constitution.

Point 3. The Supreme Court of the United States should hold that on its face and as construed and applied, the statute violates the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution because it is vague, indefinite, uncertain, too general, fails to furnish a sufficiently ascertainable standard of guilt, and enables the court and jury to speculate, and amounts to a dragnet so as to deprive appellants of liberty without equal protection and due process of law.

Point 4. The Supreme Court of the United States should hold that there was no evidence that there existed a clear and present danger that the evils prohibited by the statute would result from the literature distributed by appellant or the words and conduct of appellant.

Point 5. The Supreme Court of the United States should hold that a general verdict will not support a conviction where the undisputed evidence shows that either ground of

conviction violates the constitutional rights of appellant or where one of the provisions of the statute containing the conviction is unconstitutional.

G. C. CLARK

HAYDEN C. COVINGTON

Attorneys for Appellant

[Same Caption Omitted in Printing]

Receipts for Transcripts of the Record

TO HONORABLE TOM Q. ELLEN, Clerk of the Supreme Court of Mississippi

You will please prepare a printed copy of the undersigned brief in the above entitled and numbered cause in the Circuit Court and the Supreme Court of Mississippi, for the purpose of filing an appeal with the Clerk of the United States Supreme Court. The record should contain the following documents:

(1) All proceedings had in the Circuit Court and Supreme Court of Mississippi, including all motions filed herein.

(2) Petition for allowance of appeal to the Supreme Court of the United States, Statement, Compendium of Facts and Prayer for Reversal.

(3) Jurisdictional statement.

(4) Order allowing appeal to the Supreme Court of the United States.

(5) Statement of points to be raised upon in the Supreme Court of the United States.

(6) Affidavit, signed by the Chief Justice of the Supreme Court of Mississippi.

(7) Brief for writs in appeal to the Supreme Court of the United States.

(8) Veritas calling Appellant's attention to paragraph 1 of Rule 12 of Rules of the Supreme Court of the United States.

[Same Caption Omitted in Printing]

Acknowledgment of Service

On behalf of the Appellee in the above entitled cause, service is hereby acknowledged of a printed copy of the record containing copies of the following documents, to-wit:

1. All proceedings had in the Circuit Court and Supreme Court of Mississippi, including all opinions filed herein.

2. Petition for allowance of appeal to the Supreme Court of the United States, Statement, Assignments of Error and Prayer for Reversal.

3. Jurisdictional statement.

4. Order allowing appeal to the Supreme Court of the United States.

5. Statement of points to be relied upon in the Supreme Court of the United States.

6. Praeceptum for transcript of the record.

7. Citation, signed by the Chief Justice of the Supreme Court of Mississippi.

8. Bond for costs on appeal to the Supreme Court of the United States.

9. Notice calling Appellee's attention to paragraph 3 of Rule 12 of Rules of the Supreme Court of the United States.

10. Copy of stipulation waiving right to file papers in opposition to jurisdiction of court.

Dated, March , 1943.

GEORGE H. ETHRIDGE

*Assistant Attorney General
Counsel for Appellee*

Stipulation

It is hereby stipulated that the papers hereinbefore printed comprise true and correct copies of the record from the Circuit Court and Supreme Court of the State of Mississippi and that printing of all exhibits is omitted and said exhibits shall be submitted in original form to the Supreme Court of the United States.

Dated, March , 1943.

GEORGE H. ETHRIDGE
Assistant Attorney General
Counsel for Appellee

HAYDEN C. COVINGTON
117 Adams St.
Brooklyn, New York
Counsel for Appellant

Clerk's Certificate

STATE OF MISSISSIPPI, COUNTY OF HINDS, ss:

I, Tom Q. Ellis, Clerk of the Supreme Court of Mississippi, do hereby certify that the next foregoing pages contain a full, true and complete printed copy of all the papers, pleadings, proceedings requested in appellant's praecipe for the record on appeal to the United States Supreme Court in the case entitled R. E. TAYLOR v. State of Mississippi, and Numbered 35143 on the docket of the Supreme Court of Mississippi as the same appears on file in and of record in my office and in our said court.

Given under my hand and seal of office this the 13th day of March, 1943.

TOM Q. ELLIS, Clerk
Supreme Court of Mississippi
[SEAL]